CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 254

S. R. A., INC., PETITIONER,

vs.

STATE OF MINNESOTA

No. 255

S. R. A., INC., PETITIONER,

vs.

STATE OF MINNESOTA

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR CERTIORARI FILED JULY 24, 1945.

CERTIORARI GRANTED OCTOBER 8, 1945.

SUPREME COURT OF THE UNITED STATES

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No.

S. R. A., INC., PETITIONER,

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STATE OF MINNESOTA

ON PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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[fol. 1]

IN DISTRICT COURT OF RAMSEY COUNTY, SECOND JUDICIAL DISTRICT, STATE OF MINNESOTA

In the Matter of the Petition of S. R. A. INCORPORATED, a corporation, to have determined its claim that the property herein described is exempt from taxation and that the same was partially, unfairly, and unequally assessed, and assessed at a value greater than its actual value for the year 1940

PETITION

Now comes petitioner and respectfully alleges and shows:

I

That petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota.

[fol. 2] II

That the United States of America was, on the 1st day of May, 1940, and for many years prior thereto, and now is, the owner of a certain tract or parcel of land situate, lying, and being in the City of Saint Paul, County of Ramsey, and State of Minnesota, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

[fol. 3] That said real estate is described on the Tax Rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, and is assessed to S. R. A. Incorporated subject to fee title remaining in the United States of America.

III

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A", and made a part hereof by reference.

IV

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B", and made a part hereof by reference.

[fol. 4]

V

That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C", and made a part hereof by reference.

VI

That petitioner has paid only the sums required to be paid to the Treasurer of the United States under the terms of said contract of purchase and sale, and that petitioner is not now and was not on May 1, 1940, entitled to receive from the United States of America, through the Director of Procurement, a quit claim deed conveying title to the property above described.

VII

That the title to all of the premises above described was at all times herein mentioned and now is in the United States of America, and that the same premises are exempt from taxation by the State of Minnesota or by the County of Ramsey.

[fol. 5]

VIII

That said real estate so hereinbefore described was valued by the assessing officers of Ramsey County as of May 1, 1940, in the sum of Two Hundred Seventy-seven Thousand Six Hundred Dollars ($277,600.00), its classified value being put upon the assessment lists at One Hundred Eleven Thousand and Forty Dollars ($111,040.00), to which was applied the tax rate of ninety-nine and ninety-eight one-hundredths (99.98) mills, resulting in a tax in the sum of Eleven Thousand One Hundred One and 78/100 Dollars ($11,101.78).

IX

That said real estate has been partially, unfairly, and unequally assessed, and has been assessed at a value greater than its real or actual value.

Wherefore, Petitioner prays for an order of the within Court:

1. Determining that the title to the premises herein described is in the United States of America, and that the same are exempt from taxation by the State of Minnesota or the County of Ramsey;

2. Reducing the full and true value of said premises to the actual value thereof;

3. For such other and further relief as may to the Court seem just and proper; and

[fols. 6-7] 4. For its costs and disbursements herein.

Dated: This 23rd day of April, 1941.

S. R. A. Incorporated, by Robert E. Albrecht, President, Petitioner.

Duly sworn to by Robert E. Albrecht. Jurat omitted in printing.

[fol. 8] EXHIBIT "A" TO PETITION

(1)

PROPOSAL TO PURCHASE SURPLUS REAL PROPERTY OF THE UNITED STATES

(Act of August 27, 1935, 49 Stat. 885, U. S. C. title 40, Sec. 304a)

(See Page 5—"Instructions to Bidders")

St. Paul, Minnesota, Apr. 17, 1939.
City, State and Date

The Director of Procurement, Procurement Division, Treasury Department, Washington, D. C.

SIR:

In accordance with, and subject to the terms of your invitation, the terms of payment hereinafter set forth, and the following conditions:

(1) The Government reserves the right to reject any bid;

(2) No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of [fol. 9] the contract of which these conditions form a part or to any benefit to arise therefrom;

(3) Any title search desired shall be undertaken by the purchaser at purchaser's expense, and the Government shall not be required to furnish any abstracts or other evidence of title, but may, at its option, permit inspection and copying of its title papers by the purchaser at purchaser's expense at a place selected by the Government;

(4) Upon acceptance of this proposal the Government shall apply the purchaser's deposit toward payment of the purchase price;

(5) Upon taking possession of the property, the purchaser shall bear the risk of any loss or damage to the same from any cause whatsoever;

(6) Upon failure of the purchaser to comply with any of the terms or conditions hereof, the Director of Procurement may, by notice in writing, terminate the contract,

and any installments of the purchase price already paid shall be retained by the Government, which may thereupon resume immediate possession of the premises and, at its option, again sell the same and recover of the defaulting purchaser any deficiency in price resulting from such resale, together with all expenses incurred by reason of the default;

(7) When the purchaser has paid the total purchase price in the manner hereinafter set forth and has complied with [fol. 10] all the other terms and conditions hereof, the Director of Procurement, with the approval of the Secretary of the Treasury, shall execute and deliver a quitclaim deed conveying to the purchaser or the purchaser's nominee a marketable title to the property free and clear of all encumbrances, objections, or defects, except such as may be noted hereinafter or may have accrued against the purchaser's interest in the property subsequent to the acceptance of this proposal; *Provided, nevertheless,* that unless the purchaser shall submit proof of any encumbrance, objection, or defect before acceptance of a deed and in any event within sixty (60) days after acceptance of this proposal, all encumbrances, objections, and defects affecting the title to the property shall be conclusively presumed to have been waived and the purchaser and persons claiming under the purchaser shall thenceforth be forever barred from asserting the existence of the same, but if proof submitted within the time limited above establishes the existence of any encumbrance, objection, or defect, other than those excepted above, affecting the title agreed to be conveyed by the foregoing provisions of this paragraph, the purchaser may rescind the contract and recover all moneys already paid on account of the purchase price; *Provided, however,* that neither the purchaser nor persons claiming under the purchaser shall be entitled under any [fol. 11] circumstances to recover from the Government any damages, interest, or costs, on account of any encumbrance, objection, or defect affecting the title to the property; *Provided, further,* that, if, and only if, the Government is satisfied that no loss to it or impairment of its security will result, the purchaser or the purchaser's nominee shall be entitled, in advance of final payment, to the conveyance, otherwise subject to the foregoing provisions of this paragraph, of portions of the property upon advance payment of such portion or portions of the total

purchase price as the Government shall determine, with accrued interest at the contract rate, or at a rate determined by the Government if none be specified, and thereupon the unpaid balance of the total purchase price, as reduced by said partial payment of principal, shall remain payable as hereinafter set forth; and subject, also to the following provisions of the act of August 27, 1935, 49 Stat. 885, U. S. C. title 40, sec. 304a:

> "• • • That notwithstanding any other provisions of law, whenever any real property located outside of the District of Columbia, exclusive of military or naval reservations, heretofore or hereafter acquired by any Federal agency, by judicial process or otherwise in the collection of debts, purchase, donation, condemnation, [fol. 12] devise, forfeiture, lease, or in any other manner, is, in whole or in part, declared to be in excess of its needs by the Federal agency having control thereof, or by the President on recommendation of the Secretary of the Treasury, the Director of Procurement, with the approval of the Secretary of the Treasury, is authorized • • • to sell the same at public sale to the highest responsible bidder upon such terms and after such public advertisement as he may deem in the public interest.";

the undersigned bidder offers to purchase from the United States of America, herein referred to as the Government, in response to your invitation for bids to be opened at 10:30 A. M., April 21, 1939, the property known as the St. Paul, Minnesota, old Custom House site and building which has been declared to be in excess of the needs of the Treasury Department and is more particularly described as follows:

All that tract or parcel of land situated in the City of Saint Paul, County of Ramsey, State of Minnesota, and described as follows:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising [fol. 13] together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred

and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

provided this proposal is accepted in writing by the Government within thirty-five (35) days after the date of opening of bids specified in the invitation, for the sum of One Hundred Fifteen Thousand One Hundred One and No/100 Dollars ($115,101.00), payable (by certified check or money order drawn to the order of "Treasurer of the United States") in accordance with the option marked [X] below:

Option (A): All cash on receipt of a quitclaim deed, which shall be delivered, subject to the terms of para- [fol. 14] graph No. 7, above, within sixty (60) days [ ] from the date of the Government's letter accepting this proposal, unless such time shall be extended by the Government,

or, Option (B): Five per centum (5%) of the purchase price to accompany the proposal as evidence of good faith and to be applied to the purchase price in the event this proposal is accepted; five per centum (5%) of the purchase price together with interest thereon at the rate of four per centum (4%) payable nine (9) months from the date of the Government's letter accepting this proposal; balance to be paid as follows: The sum of Nine thousand five hundred dollars ($9,500.00) payable, respectively, [X] one, two, three, four, five, six, seven, eight and nine years from the date of acceptance of this proposal, each installment of Nine thousand five hundred dollars ($9,500.00) to be applied first to interest due on the unpaid balance of the purchase price at the rate of four per centum (4%) per annum, the remainder of such installments to be applied as principal to the unpaid balance of the purchase price, the then remaining balance of the purchase price to be due and payable at the end of the tenth (10th) year together with interest thereon at the rate of four

per centum (4%) provided, that purchaser, if not in default with respect to payment of any installment or interest may [fol. 15] pay in full any or all unpaid installments of principal with accrued interest at said rate at any time within ten (10) years from date of acceptance of proposal;

Leases may be executed by installment purchasers without the Government's approval but shall be subordinate to the Government's interest in the property.

Possession will be given upon payment of the purchase price or upon the first partial payment thereof.

Enclosed please find the required 5% deposit: (Certified check) (money order) in the amount of Five Thousand Seven Hundred Fifty-five and 05/100 Dollars ($5,755.05).

S. R. A. Incorporated (Bidder), by R. E. Albrecht, President. Individual or Corporate Seal (Corporate Seal.)

[fol. 16] Instructions to Bidders

1. Proposals must be in duplicate On This Form, enclosed in a sealed envelope marked "Proposal For Purchase of (insert identifying description")) and mailed or delivered by hand to the Section of Space Control, Procurement Division, Treasury Department, Washington, D. C. Telegraphic bids will not be considered but modifications by telegraph of bids already submitted will be considered if received prior to the hour set for opening. The officer whose duty it is to open bids will decide when the specified time has arrived, and no bid received thereafter will be considered, except that when a bid arrives by mail after the time fixed for opening, but before award is made, and it is shown to the satisfaction of the officer authorized to make the award that the non-arrival on time was due solely to delay in the mails for which the bidder was not responsible, such bid will be received and considered. No responsibility will attach to an officer for the premature opening of a bid not properly addressed and identified.

2. Each Proposal Must Be Accompanied by a Certified Check or Money Order Drawn to the Order of "Treasurer of the United States" for 5% of the Amount of the Bid, [fol. 17] the Proceeds of Which Shall Become the Property

of the United States if the Bid Is Withdrawn Within the Period Hereinbefore Specified for Acceptance or if the Bidder Defaults After Acceptance. The proceeds of the checks of unsuccessful bidders will be returned to them as promptly as possible. The proceeds of the successful bidder's check will be applied on the purchase price.

3. If the bidder is an individual, an adhesive seal shall be affixed opposite the signature. If the bidder is a corporation the corporate seal shall be affixed. If the corporation has no corporate seal, the fact shall be stated and an adhesive seal shall be affixed.

4. A proposal executed by an attorney or agent on behalf of the bidder shall be accompanied by two authenticated copies of his power of attorney, or other evidence of his authority to act on behalf of the bidder. If the bidder is a corporation, the Certificate below must be executed. If the proposal is signed by the secretary of the corporation, then the Certificate must be executed by some other officer of the corporation under the corporate seal. In lieu of the Certificate below, there may be attached to the proposal, copies of so much of the records of the corporation as will [fol. 18] show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

Certificate of Corporate Bidder

I, Ryland J. Rothschild certify that I am the secretary of the corporation named as bidder herein; that Robert E. Albrecht who signed this proposal on behalf of the bidder, was then President of said corporation; that said proposal was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Ryland J. Rothschild, Secretary. (Affix Corporate Seal.) (Seal.)

Copy.

[fol. 19] EXHIBIT "B" TO PETITION

WESTERN UNION

Money Order Message

Real Estate

1894

Money Sent by Telegraph and Cable to all the World

B. White
President

J. C. Willever
First Vice President

Newcomb Carlton
Chairman of the Board

No. WAB24 524 12th St. SW April 21, 1939

To Treasurer of United States, care Director Procurement Department.:

The Money Order paid you herewith is from S. R. A., Inc. by R. E. Albrecht at St. Paul, Minn. and included the following Message: INCREASE OUR BID ON OLD CUSTOMS BLDG. ST. [fol. 20] PAUL BY SIX THOUSAND DOLLARS STOP WIRING HEREWITH ADDITIONAL FIVE PERCENT. $300.00. OFFICE REG. $40.50.

Received: Division of Procurement, Public Works Branch. April 21, 1939.

Noted —— ——.
Ans'd —— ——.
10:40 A. M.

Received April 21//12AM '39, Space Control

Procurement Division, The Western Union Telegraph Company.

Copy.

[fol. 21] EXHIBIT "C" TO PETITION

St. Paul, Minn.; CU.H. (OLD)
T5-PB-601

TREASURY DEPARTMENT

Procurement Division
Washington

Public Buildings Branch
In Replying, Quote the Above
Subject, Building, and these
letters PB-SC-RE

S. R. A. Incorporated,
Attention: R. E. Albrecht, President,
237 Woodlawn Avenue,
St. Paul, Minnesota.

May 20, 1939

Sirs:

Pursuant to authority contained in the Act of August 27, 1935, 49 Stat. 885 (U. S. C. title 40, sec. 304a), your proposal dated April 17, 1939, as amended by your telegram dated April 21, 1939, in the amount of One Hundred Twenty-one Thousand One Hundred and One Dollars ($121,101.00) the higher bid of two received after public advertisement, and the only bid conforming to the terms thereof, to pur-[fol. 22] chase the old Custom House site and building, at St. Paul, Minnesota, is hereby accepted, in accordance with all the terms set forth in said proposal and telegram, copies of which are attached hereto and made a part hereof.

Very truly yours, W. E. Reynolds, Acting Director of Procurement.

Approved: May 26, 1939. Stephen B. Gibbons, Acting Secretary of the Treasury.

Copy.

IN DISTRICT COURT OF RAMSEY COUNTY

STIPULATION OF FACTS

It is Hereby Stipulated by and between the parties to the above entitled cause, by and through their respective counsel, that the following facts may be and the same are agreed to be admitted in the trial of said cause:

1. That S. R. A., Incorporated is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and is the petitioner in the above entitled cause.

[fol. 23] 2. That the premises which are the subject of the above entitled petition are described as follows:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

and are situate in the City of Saint Paul, County of Ramsey, and State of Minnesota, at the intersection of Fifth and Wabasha Streets in said City; that the real estate is described on the tax rolls of Ramsey County, Minnesota, as [fol. 24] the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota.

3. That for tax purposes the premises so described are assessed upon the records of Ramsey County, Minnesota, to S. R. A. Incorporated "subject to fee title remaining in the United States of America."

4. That the premises above described were acquired by the United States of America by deed from various parties in the year 1867, and that the legal title to the said premises is now and ever since 1867 has been in the United States of America, save as the same may have been affected by the transactions with S. R. A. Incorporated as hereinafter set forth:

That in or about the year 1870, a building was erected upon the above described premises by the United States of America, and for many years thereafter, the premises were occupied by the United States of America as a post office and as an office for various departments of the United States, including the Department of Internal Revenue; that for some years prior to the 1st day of April, 1939, neither the building on the premises nor any portion of the premises had been occupied by the United States of America or by any other person whatsoever.

[fol. 25] 5. That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A" and made a part hereof by reference.

6. That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B" and made a part hereof by reference.

7. That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C" and made a part hereof by reference.

8. That it is claimed by petitioner that prior to the time when its proposal, represented by Exhibit "A" hereto attached, was submitted to the United States of America, S. R. A. Incorporated had consulted counsel with respect to the

question of whether or not the property would be subject [fol. 26] to taxation until the purchase price therefor was fully paid to the United States of America, and was advised that in the opinion of counsel, the property would not be subject to taxation until the purchase price was fully paid, and that this advice was a factor in determining the amount which S. R. A. Incorporated bid for the premises.

9. That subsequent to the 26th day of May, 1939, the building which had been erected upon the premises by the United States of America was razed, demolished, and destroyed by S. R. A. Incorporated; that subsequent thereto and prior to the 1st day of May, 1940, a building had been erected upon said premises by S. R. A. Incorporated; that on the 1st day of May, 1940, stores in said building had been leased by S. R. A. Incorporated to various tenants, and the balance of the premises not covered by the building had been leased for automobile parking purposes, and that all of said premises on May 1, 1940, was used for purposes of a commercial nature, and no part or portion thereof was devoted to the business or activities of the United States of America; that the petitioner collected and retained the rents for its own account.

10. That S. R. A. Incorporated has paid to the United States of America the payment accompanying the proposal of April 17, 1939, of $5,755.05; the payment accompanying [fol. 27] the supplemental proposal of April 21, 1939, of $300.00; the payment due February 26, 1940, of $6,055.05, with interest thereon at 4% per annum; and on May 1, 1940, no other payments had been made to the United States of America.

11. For the purposes of determining the issue here submitted and without prejudice to any other issue, it is stipulated that the property in question was assessed and taxed as all other real property in the County and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the statutes of the State of Minnesota; that the tax records of said Ramsey County, Minnesota, of taxes levied and assessed for the year 1940 were duly certified on January 6, 1941, by Eugent A. Monick, County Auditor of said Ramsey County, including the property in question, to be a correct list of the taxes levied

upon the real property in said County of Ramsey for the year 1940; and that on said last mentioned date Elsa M. Obst duly certified that she received the said tax records from the said County Auditor; and that said tax records contained the following entries pertaining to the assessment of the property in question, to-wit: assessed in the name of "S. R. A. Incorporated (subject to the fee title remaining in [fol. 28] the United States of America)"; description of property: the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8). Saint Paul, Minnesota; assessed valuation $111,040; general tax $11,101.78; total general tax $11,101.78; street sprinkling $27.97, total tax $11,129.75; and that said tax records have been in the possession of the said County Treasurer for the collection of said taxes ever since said last mentioned date.

12. That the assessor of said Ramsey County determined the true and full value of the property in question as of May 1, 1940, to be the sum of $277,600.00; and that the tax rate upon real property in the County of Ramsey with the exception of properties devoted to homesteads, for the year 1940, was 99.98 mills upon the assessed valuation, which was the rate applied to the property in question.

13. That only the question of immunity from taxation is being submitted to the Court for determination at this time; and that all other questions in this case, since they have no bearing upon the issue of immunity from taxation, have been reserved by order of this Court for determination at a later date in the event that the State prevails upon the issue here submitted.

[fol. 29] Dated: This 28th day of November 1941.

James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for County of Ramsey and State of Minnesota. Otis, Faricy & Burger, Attorneys for Petitioner.

[fols. 30-39] Exhibit "A" omitted. Printed side page 8, ante.

[fol. 40] Exhibit "B" omitted. Printed side page 19, ante.

[fols. 41-42] Exhibit "C" omitted. Printed side page 21, ante.

[fol. 43] In District Court of Ramsey County

Findings of Fact, Conclusions of Law and Order for Judgment

The above entitled matter having come duly on for trial, was tried before the undersigned without a jury on November 28, 1941, Otis, Faricy & Burger appearing as attorneys for the petitioner, S. R. A. Incorporated, and James F. Lynch, County Attorney, and Andrew R. Bratter, Assistant County Attorney, appearing as attorneys for the State of Minnesota,

And it appearing that by order entered by this Court dated the 21st day of November, 1941, the issue of whether or not the title to the premises described in the petition herein is in the United States or whether the same is exempt from taxation by the State of Minnesota or by the County of Ramsey shall be first tried and submitted to the Court and determined by it without prejudice to the right of the petitioner to have tried thereafter the issue as to whether or not the said real estate described in the petition has been partially, unfairly, and unequally assessed and assessed at a value greater than its real or actual value by the assessing officers of Ramsey County, as of May 1, 1940, in the event the final judgment of the Court upon the trial of the first issue shall be unfavorable to the petitioner.

[fol. 44] And the Court having heard the evidence and the arguments of counsel upon the issue of whether or not the title to the premises described in the petition herein is in the United States of America or whether the same is exempt from taxation by the State of Minnesota or the County of Ramsey, upon the evidence and the pleadings, the Court finds,

As Facts

1. That the petitioner in the above entitled cause, S. R. A. Incorporated, is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota.

2. That the premises which are the subject of the petition are described as follows:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by [fol. 45] deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

and are situate in the City of Saint Paul, County of Ramsey and State of Minnesota, at the intersection of Fifth and Wabasha Streets in said City.

3. That the real estate is described on the tax rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota.

4. That for tax purposes, the premises so described are assessed upon the records of Ramsey County, Minnesota, to S. R. A. Incorporated "subject to fee title remaining in the United States of America."

5. That the premises above described were acquired by the United States of America by deed from various parties in the year 1867, and that the legal title to the said premises [fol. 46] was on May 1, 1940, and ever since 1867 had been in the United States of America.

6. That in or about the year 1870, a building was erected upon the above described premises by the United States of America, and for many years thereafter, the premises were

occupied by the United States of America as a Post Office and as an office for various departments of the United States, including the Department of Internal Revenue; that for some years prior to the 26th day of May, 1939, neither the building on the premises nor any portion of the premises had been occupied by the United States of America or by any other person whatsoever.

7. That on or about the 26th day of May, 1939, a contract for deed was entered into between S. R. A. Incorporated and the United States of America under the terms of which contract for deed S. R. A. Incorporated agreed to pay to the United States of America for the purchase price of said premises the sum of One Hundred Twenty-one Thousand One Hundred One Dollars ($121,101.00), 5% thereof to be paid May 26, 1939, 5% within nine months from May 26, 1939, with interest thereon at the rate of 4% per annum, and the balance at the rate of Ninety-five hundred Dollars ($9,500.00) payable one, two, three, four, five, six, seven, eight, and nine years from May 26, 1939, each installment [fol. 47] of Ninety-five Hundred Dollars ($9500.00) to be applied first to interest due on the unpaid balance of the purchase price at the rate of 4% per annum, the remainder of said installments to be applied as principal to the unpaid balance of the purchase price, the then remaining balance of the purchase price to be due and payable on May 26, 1949, together with interest thereon at the rate of 4%, with the right on the part of S. R. A. Incorporated, if not in default with respect to the payment of any installment or interest, to pay in full any or all unpaid installments of principal with accrued interest at 4% at any time within ten years from May 26, 1939, and the United States of America agreed, when S. R. A. Incorporated has paid the total purchase price in the manner so provided, and has complied with all terms and conditions of such contract for deed, to execute and deliver to S. R. A. Incorporated a quit claim deed conveying to it or its nominee a marketable title to the premises, free and clear of all encumbrances, objections, or defects, except such as may have accrued against the purchaser's interest in the property subsequent to May 26, 1939.

8. That subsequent to the 26th day of May, 1939, the building which had been erected on the premises by the United States of America was razed, demolished, and de-

stroyed by S. R. A. Incorporated; that subsequent thereto [fol. 48] and prior to the 1st day of May, 1940, a building had been erected upon said premises by S. R. A. Incorporated; that on the 1st day of May, 1940, stores in said building had been leased by S. R. A. Incorporated to various tenants, and the balance of the premises not covered by the building had been leased for automobile parking purposes, and that all of said premises on May 1, 1940, was used for purposes of a commercial nature, and no part or portion thereof was devoted to the business or activities of the United States of America; that the petitioner collected and retained the rents for its own account.

9. That S. R. A. Incorporated has paid to the United States of America the payment of 5% of the purchase price amounting to Six Thousand Fifty-five and 05/100 Dollars ($6055.05) and due on May 26, 1939, the payment due February 26, 1940, of Six Thousand Fifty-five and 05/100 Dollars ($6055.05), with interest thereon at 4% per annum; and on May 1, 1940, no other payments had been made to the United States of America.

10. That the premises hereinbefore described were assessed and taxed as all other real property in the County and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the Statutes of the State of Minnesota; that the tax [fol. 49] records of said Ramsey County, Minnesota, of taxes levied and assessed for the year 1940 were duly certified on January 6, 1941, by Eugene A. Monick, County Auditor of said Ramsey County, including the property in question, to be a correct list of the taxes levied upon the real property in said County of Ramsey for the year 1940; and that on said last mentioned date Elsa M. Obst, County Treasurer, duly certified that she received the said tax records from the said County Auditor; and that said tax records contained the following entries pertaining to the assessment of the property in question, to-wit: assessed in the name of "S. R. A. Incorporated (subject to the fee title remaining in the United States of America)"; description of property: the East ten (10) feet of the South one Hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota;

assessed valuation One Hundred Eleven Thousand Forty Dollars ($111,040.00); general tax Eleven Thousand One Hundred One and 78/100 Dollars ($11,101.78); street sprinkling Twenty-seven and 97/100 Dollars ($27.97), total tax Eleven Thousand One Hundred Twenty-nine and 75/100 Dollars ($11,129.75); and that said tax-records have been in the possession of the said County Treasurer for the collection of said taxes ever since said last mentioned date.

[fol. 50] 11. That the assessor of said Ramsey County determined the true and full value of the property in question as of May 1, 1940, to be the sum of Two Hundred seventy-seven Thousand Six Hundred Dollars ($277,600.00); and that the tax rate upon real property in the County of Ramsey with the exception of properties devoted to homesteads, for the year 1940, was 99.98 mills upon the assessed valuation, which was the rate applied to the property in question.

12. That no part or portion of the taxes so assessed for the year 1940 as hereinbefore set forth has been paid.

13. That there is no authority, statutory or otherwise, which will permit the assessment of a tax against said premises subject to fee title remaining in the United States of America.

14. That only the question of immunity from taxation is being submitted to the Court for determination at this time; and that all other questions in this case, since they have no bearing upon the issue of immunity from taxation, have been reserved by order of this Court for determination at a later date in the event that the State prevails upon the issue here submitted.

[fol. 51] AS CONCLUSIONS OF LAW

1. That the title to the premises situate, lying and being in the County of Ramsey and State of Minnesota, described as follows, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint

Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68,

was on May 1, 1940, in the United States of America, and that the same were exempt from taxation by the State of Minnesota or the County of Ramsey.

[fol. 52] 2. That the tax assessed against the premises above described subject to fee title remaining in the United States of America for the year 1940 and the whole of said tax is illegal and void and of no force and effect.

Let judgment be entered accordingly.

Dated: This 23rd day of January, 1942.

John W. Boerner, District Judge.

Stay of 40 days allowed. Boerner, J.

IN DISTRICT COURT OF RAMSEY COUNTY

NOTICE OF PROPOSAL FOR SETTLED CASE

To the above named Petitioner, S. R. A. Incorparted, a corporation and Messrs. Otis, Faricy and Burger, Attorneys for the Petitioner:

You Will Please Take Notice that the State of Minnesota, and County of Ramsey proposes the within Stipulation of Facts, Petition, Findings of Fact and Conclusions of Law and Order for Judgment, all pertaining to the above entitled cause consisting of 29 pages of typewritten matter, as and for the settled case herein.

[fol. 53] You Will Also Please Take Notice that the State of Minnesota, and County of Ramsey will apply to the Court

in Chambers for an Order settling and allowing said proposed case as and for the settled case herein.

James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for the State of Minnesota and County of Ramsey.

In District Court of Ramsey County

Certificate

I hereby certify that I have examined the foregoing settled case, consisting of 29 pages of typewritten matter, and that I find the same to contain the Petition herein, the Stipulation of Facts and the Findings of Fact and Conclusions of Law, which constitute all of the evidence, all of the papers filed herein and all of the proceedings had herein and that the same is hereby settled and allowed as and for the settled case in the above entitled action.

[fol. 54] Dated at St. Paul, Minnesota, this 3rd day of February, 1942.

John W. Boerner, District Judge.

In District Court of Ramsey County

Amended Motion for Amendment of Findings of Fact, Conclusions of Law and Order for Judgment and in the Event Said Motion Is Denied, for a New Trial.

To the above named Petitioner, S. R. A. Incorporated, a corporation and Messrs. Otis, Faricy & Burger, Attorneys for the Petitioner:

You Will Please Take Notice that the State of Minnesota, and County of Ramsey on the settled case and on the files, records and proceedings herein, will move the above named Court, at a special term thereof, to be held at the Court House in the City of St. Paul, County of Ramsey, State of Minnesota, on the 28th day of March, 1942, at ten o'clock in the forenoon of said day, or as soon thereafter as Counsel can be heard, for an Order amending the Findings of Fact,

Conclusions of Law and Order for Judgment heretofore [fol. 55] made and filed herein in the following particulars:

I

That paragraph 13 of the said Findings of Fact be stricken out.

CONCLUSIONS OF LAW:

I

That all of said Conclusions of Law and Order for Judgment be stricken out and the following Conclusions of Law and Order for Judgment substituted in lieu thereof:

I

That on May 1, 1940, the United States of America was vested with the legal title as security for payment of the purchase price of the said premises situate, lying and being in the County of Ramsey, State of Minnesota, described as follows, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of [fol. 56] the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68,

and on said last-mentioned date the equitable title to said premises was vested in the petitioner, S. R. A. Incorporated, and was subject to taxation by the State of Minnesota and the County of Ramsey.

II

That the tax assessed against the premises above described subject to the legal title remaining in the United

States of America, for the year 1940 and the whole of said tax is legal and valid.

[fol. 57] III

That the petitioner is without authority to assert the immunity of the United States from taxation of its lands by the State of Minnesota as a defense.

ALTERNATIVE MOTION

In the event the foregoing Motion is denied, the State of Minnesota and County of Ramsey will move the Court for an order vacating and setting aside the Findings of Fact, Conclusions of Law and Order for Judgment thereon heretofore made and filed herein, and granting a new trial herein. Said Motion will be based upon the following Assignments of Error:

1. That the decision of the Court is not sustained by the evidence and is contrary to law.

2. That the Court erred in making Findings of Fact number "13. That there is no authority, statutory or otherwise, which will permit the assessment of a tax against said premises subject to fee title remaining in the United States of America".

3. That the Court erred in finding as Conclusions of Law.

"1. That the title to the premises situate, lying and being in the County of Ramsey and State of Minnesota, described as follows, to-wit:

[fol. 58] The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, & 67, and by John Randall and wife by deed dated April 10, 1867,

recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68,

was on May 1, 1940, in the United States of America, and that the same was exempt from taxation by the State of Minnesota or the County of Ramsey.

2. That the tax assessed against the premises above described subject to fee title remaining in the United States of America for the year 1940 and the whole of said tax is illegal and void and of no force and effect."

[fol. 59] 4. That the Court erred in denying the amended motion made on behalf of the State of Minnesota and the County of Ramsey for an order amending the Findings of Fact, Conclusions of Law and Order for Judgment.

James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for the State of Minnesota and County of Ramsey.

In District Court of Ramsey County

Notice

To James F. Lynch and Andrew R. Bratter, Attorneys for the State of Minnesota:

You Will Please Take Notice that an order, a copy of which is hereto attached, was entered by the within Court on the 30th day of March, 1942.

Otis, Farley & Burger, Attorneys for Petitioner, W-1862 First Natl. Bk. Bldg., Saint Paul, Minnesota.

[fol. 60] In District Court of Ramsey County

Order Denying Motion

This matter came before the Court at Special Term on March 28, 1942, upon the amended motion of the State of Minnesota and County of Ramsey for an order amending the findings of fact, conclusions of law, and order for judgment heretofore made and filed herein, in the particulars set forth in the motion papers filed herein, and in the event

said motion is denied, for an order vacating and setting aside the findings of fact, conclusions of law, and order for judgment heretofore made and filed herein, and granting a new trial herein upon the grounds set forth in the motion papers filed herein.

James F. Lynch, County Attorney, and Andrew R. Bratter, Assistant County Attorney, appeared for the State of Minnesota and County of Ramsey and in support of said motions, and Otis, Faricy & Burger appeared as attorneys for the Petitioner, S. R. A. Incorporated, and in opposition thereto.

Upon the files and records, after hearing counsel, and upon due consideration, it is

Ordered that the said motions and each of them be, and the same are hereby denied.

Dated: March 30, 1942.

John W. Boerner, District Judge.

Stay of 40 days allowed.

[fol. 61] In District Court of Ramsey County

Notice of Appeal to Supreme Court

To the above named Petitioner S. R. A. Incorporated, a corporation, and to Messrs. Otis, Faricy & Burger, its attorneys, and to J. J. Fitzgerald, Clerk of the Above Named Court:

You Will Please Take Notice that the State of Minnesota and the County of Ramsey appeal to the Supreme Court of the State of Minnesota from that certain order of the above named court dated and filed herein on the 30th day of March, 1942, denying the motion of the State of Minnesota and the County of Ramsey for an order amending the findings of fact, conclusions of law and order for judgment theretofore made and filed herein and in the alternative denying the motion of the State of Minnesota for a new trial.

Dated this 4th day of March, 1942.

James F. Lynch, County Attorney and Andrew R. Bratter, Assistant County Attorney.

[fol. 62] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

In re Petition of S. R. A., INC. for Determination of its Claim that Certain Property Is Tax Exempt for 1940

33270

S. R. A., INC., Respondent,

vs.

STATE OF MINNESOTA and COUNTY OF RAMSEY, Appellants

SYLLABUS

1. The power of taxation is inherent in sovereignty; as such, constitutional provisions are not a grant of, but a limitation upon, this power, and, except as thus limited, it is exhaustive and embraces every conceivable subject of taxation.

2. Taxes are pecuniary charges imposed by the legislative power to raise money for public purposes—a burden imposed to supply the very lifeblood of the state.

3. It is for the legislature to devise the mode, form and extent of taxation to be imposed.

4. Real estate taxes, which are assessed and enforced against the land itself, are not charges against the person owning the property or his estate, and proceedings to enforce them are strictly *in rem*, not *in personam*.

5. Real estate for taxation purposes, as defined by Minn. St. 1941, § 272.03, subd. 2 (Mason St. 1927, § 1977), includes the land itself and all structures and improvements upon it, as well as all rights and privileges belonging or appertaining to the land.

6. An executory contract for the sale of land under which the vendee is entitled to or does take possession [fol. 63] thereof is deemed, for the purposes of the mortgage registration act, a mortgage of the land for the unpaid balance of the purchase price. Minn. St. 1941, §§ 287.01, subds. 2, 3, 287.02, 287.04 (Mason St. 1927, § 2322).

7. A mortgage upon real estate, while in form a conveyance of an estate or interest in land, is in its purpose and effect a mere lien or security—a chattel, or thing in action.

8. Under a contract for the sale of land where the vendee is entitled to possession or where he takes such possession, the relationship between the vendee and vendor is similar to that created by mortgage or conditional sale, the beneficial interest being in the vendee and the security interest in the vendor.

9. Where the vendee under such a contract has taken possession of the land, his interest for the purpose of taxation is the same as that of any other owner.

10. As such owner, the vendee may not use his vendor's immunity to taxation as a shield to avoid meeting his tax obligations as an owner, since it is his land that is being taxed, not that of his vendor.

11. A finding not sustained by the record and which is in substance a mere conclusion of law may be stricken as irrelevant to the issues.

Order reversed.

OPINION—Filed December 24, 1942

JULIUS J. OLSON, Justice:

These proceedings were brought by respondent pursuant to Minn. St. 1941, § 278.01 (Mason St. 1940 Supp. § 2126-1) to secure an order of the court "determining that the title" to certain real estate in St. Paul "is in the United States," and for that reason "exempt from taxation by the state"; [fol. 64] also (we assume as an alternative) to reduce "the full and true value of said premises to the actual value thereof." (Hereafter we shall refer to respondent as S. R. A. and to appellant as the state.)

Counsel stipulated as to the facts. These were adopted by the court as its findings and an additional finding, No. 13, made by it, to which reference will be made later. A brief summary thereof will be sufficient for our purpose.

Title in fee to the premises involved was acquired by the United States in 1867, and since that time its record title has so remained. Over a period of many years the site was occupied by the United States as a post office and for other governmental purposes. But later, and "for some years

prior to the 26th day of May, 1939," the premises were not in use by anyone. On that date a contract for deed was entered into between S. R. A. and the United States. Under its terms, for a consideration of $121,101, to be paid, after the initial payment, at the rate of $9,500 during each of the next succeeding nine years, the United States agreed, if on May 26, 1949, the final due date, S. R. A. "has paid the total purchase price," with interest and otherwise complied with all the terms of the contract, to "execute and deliver to S. R. A. Incorporated a quit claim deed conveying to it or its nominee a marketable title to the premises, free and clear of all encumbrances, objections, or defects, *except such as may have accrued against the purchaser's interest in the property subsequent to May 26, 1939.*" (Italics supplied.) (The contract is silent on the subject of taxes, unless the italicized portion may point in that direction.)

Upon the execution of the contract, S. R. A. entered into full possession, razed the existing buildings, erected another, and made use of the remainder for an automobile parking lot, leasing the new building and parking lot for commercial purposes and for the rental income derived therefrom. No part thereof has since been devoted to any business or activity of the United States. S. R. A. has [fol. 65] taken and retains all rents and income for its own account. On May 1, 1940 (the assessment date under our law), the assessor of Ramsey county assessed the property upon the same basis as other like property, listing it for taxation as being owned by "S. R. A. Incorporated 'subject to fee title remaining in the United States of America.'" Instead of paying the taxes so levied, S. R. A. brought these proceedings.

Finding No. 13 reads: "That there is no authority, statutory or otherwise, which will permit the assessment of a tax against said premises subject to fee title remaining in the United States of America."

As conclusions of law the court held (1) that title to the premises was on May 1, 1940, in the United States "and that the same were exempt from taxation by the State of Minnesota or the County of Ramsey"; and (2) that "the tax assessed against the premises above described subject to fee title remaining in the United States of America for the year 1940 and the whole of said tax is illegal and void and of no force and effect."

"Only the question of immunity from taxation" was "submitted," all other questions being reserved "for determination at a later date in the event that the State prevails" upon that issue.

The state's blended motion for amended findings or new trial was denied, and it appeals. Under our practice, only that part of the order denying a new trial is here for review. That S. R. A. is in complete possession, and is enjoying full use, of the property as a commercial enterprise in competition with other like real estate in St. Paul is not, nor can it be, denied. As to its value, counsel stipulated, and the court found, that "for the purposes of determining the issue here submitted * * * the property in question was assessed and taxed as all other real property * * * and upon the same rates as other like real property" in [fol. 66] St. Paul, and that the assessor "determined" its "true and full value * * * as of May 1, 1940," to be $277,600. So, at the outset, it would seem to most people that this property and S. R. A.'s use and possession of it should bear its just proportion of the public tax burden.

1. As we pointed out in Reed v. Bjornson, 191 Minn. 254, 257, 258, 253 N. W. 192, "the power of taxation is inherent in sovereignty." As such, "constitutional provisions are not a grant of, but a limitation upon, this power, and except in so far as thus limited it is exhaustive and embraces every conceivable subject of taxation." As said by Mr. Justice Mitchell in County of Redwood v. Winona & St. P. Land Co. 40 Minn. 512, 517, 41 N. W. 465, 42 N. W. 473:

> "The taxing power, when acting within its legitimate sphere, is one which knows no stopping-place until it has accomplished the purpose for which it exists, viz., the actual enforcement and collection from every lawful object of taxation of its proportionate share of the public burdens; and, if prevented by any obstacles, it may return again and again until, the way being clear, the tax is collected."

The same thought is expressed in Nicol v. Ames, 173 U. S. 509, 515, 19 S. Ct. 522, 525, 43 L. ed. 786, 791, in this fashion:

> "The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation

as is the air he breathes to the natural man. It is not only the power to destroy, but it is also the power to keep alive."

2. Taxes have been defined as "pecuniary charges imposed by the legislative power of the state upon property to raise money for public purposes." Davidson v. County of Ramsey, 18 Minn. 432, 434 (482); "a burden imposed for the very lifeblood of the state," London & N. W. Am. Mtge. Co. v. Gibson, 77 Minn. 394, 399, 80 N. W. 205, 777. In some of our cases we have characterized a tax as a "contribution" by the citizen in return for the protection afforded him by the state. But this, obviously, is an erroneous theory, since the "power to tax is not a statutory right, but an incident of sovereignty." Webb v. Bidwell, [fol. 67] 15 Minn. 394, 397 (479).

Mr. Justice Stone (now Chief Justice of the United States Supreme Court), in a dissenting opinion (G. N. Ry. Co. v. Weeks, 297 U. S. 135, 155, 80 L. ed. 532, 544) said: "Taxation is but a method of raising revenue to defray the expenses of government, and of distributing the burden among those who must bear it."

3. We think the state's power to tax S. R. A.'s interests and rights cannot be doubted. So the question is only whether the legislature has provided the necessary mechanics for reaching its interests. It is for the legislature to devise the mode, form, and extent of taxation to be imposed. Webb v. Bidwell, 15 Minn. 394 (479); 6 Dunnell, Dig. & Supp. § 9115, and cases under note 23.

4. Under our law, real estate taxes are assessed and enforced against the land itself. They are not charges against the person owning the property or his estate. Proceedings to enforce them are strictly *in rem*. In that respect they differ from personal property taxes, which are enforced *in personam*, although assessed and imposed because of property ownership. 6 *Id.* § 9281; and cases under notes.

5. Real estate for taxation purposes, by Minn. St. 1941, § 272.03, subd. 2 (Mason St. 1927, § 1977), includes "the land itself," all "structures and improvements" upon it as well as "all rights and privileges" belonging or appertaining to the land, "and all mines, minerals, quarries, fossils, and trees on or under the same." It will thus be seen

that each parcel of real estate is a separate entity, a unitary item. In proceedings to enforce the tax it is the property itself that is charged. The obvious purpose of so levying and enforcing the tax is to reach all interests and equities in the property, so that in the tax proceedings, if otherwise regular and valid, the holder of the tax certificate ultimately becomes the owner of the fee. In the instant case, S. R. A. [fol. 68] takes the view that, since the fee is still in the United States and cannot be reached, therefore its interest in the property may not be reached, and this upon the theory that there is no provision under our law by which a mere "equity" of the purchaser may be reached in the circumstances here appearing.

The state does not question tax immunity as to the United States and does not claim that as to it the fee title may be divested. Its position is that S. R. A., having purchased the property in the usual course of a commercial transaction, stands in no other or better position than any other purchaser under a like contract with an individual or corporation. It points out that under our statutes and decision law the owner of the fee holds only the legal title as security for the payment of the purchase price; hence that the purchaser is charged with the entire burden of meeting all taxes that might lawfully be levied if it were dealing with anyone else. In other words, it takes the view that the tax burden is the same as if the United States had parted with its title and taken a mortgage back for the unpaid portion of the purchase price. Furthermore, it contends that S. R. A. is not in a position to use the Federal Government's tax immunity as a barrier to the enforcement of the tax as levied. And, since the United States is not a party to this proceeding, S. R. A. cannot be heard as the champion of the government's interests or right of tax immunity.

6. By L. 1907, c. 328, § 1, now Minn. St. 1941, §§287.01, 287.02, 287.03, 287.04 (Mason St. 1927, § 2322), it was provided:

> "The words 'real property,' 'real estate' and 'land,' as used in this act, in addition to the definitions thereof contained in the Revised Laws 1905, shall include all property a conveyance whereof may be recorded or registered by a register of deeds under existing laws; and the word 'mortgage,' as so used, shall mean any instrument creating or evidencing a lien of any kind on

such property, given or taken as security for a debt, notwithstanding such debt may also be secured in part by a lien upon personalty. *An executory contract for the sale of land, under which the vendee is entitled to or does take possession thereof, shall be deemed,* [fol. 69] *for the purposes of this act, a mortgage of said land for the unpaid balance of the purchase price.*" (Italics supplied.)

7. A mortgage upon real estate, as we have consistently held, while in form a conveyance of an estate or interest in land, in its purpose and effect is a mere lien or security—a chattel, or thing in action, which passes to the mortgagee's administrator or executor. 4 Dunnell, Dig. & Supp. § 6145, and cases cited under notes 1 to 4, inclusive.

8. This statute has been before this court in many cases and has withstood constitutional and other attacks. For our purpose, the summation of our prior cases made by this court in Summers v. Midland Co. 167 Minn. 453, 455, 209 N. W. 323, is worthy of quotation here:

"What is the status of the parties to such contract for deed? The vendor holds the legal title merely as security for the payment of the purchase price. He has a lien thereon for his claim. In legal form he has agreed to convey a good title at a future time. But we must look to the substance of the transaction more than to the form. The vendee is the equitable and substantial owner subject only to the payment of the balance of the purchase price. Possession is important. He cannot be ousted by the vendor in the absence of default. He pays the taxes. The relation is substantially that of mortgagor and mortgagee. • • • The only difference is a more efficient remedy in case of default. The vendor holds the title in trust for the vendee. • • • The vendee's interest in the land may be sold on execution. • • • It may become the subject of a trust or power in trust and it may be mortgaged. • • • It may be a homestead. • • •, The vendee may recover damages resulting from trespass. • • • Indeed the vendee must bear the losses due to fires or the elements. • • • He must bear the deterioration. He has an insurable interest. He is entitled to

benefits that may accrue. His interest is an estate of inheritance. He is clothed with the indicia of ownership to the same extent as if he had taken a deed and given a purchase-money mortgage. The balance of the purchase money is treated as a part of the personal estate of the vendor and goes to his personal representative, but the interest of the vendee is regarded as real estate passing to his heirs and not to his personal representative." (Asterisks indicate the citation of supporting cases.)

[fol. 70] In one of our latest cases, First & Am. Nat. Bank v. Whiteside, 207 Minn. 537, 543, 292 N. W. 770, we said:

"The relationship (between the vendee and vendor) was similar to that created by mortgage or conditional sale, the beneficial interest being in the vendee and the security interest in the vendor."

S. R. A. cites and relies upon such cases as N. P. R. Co. v. Traill County, 115 U. S. 600, 610, 6 S. Ct. 201, 204, 29 L. ed. 477, 480, holding:

"If the assessment of these taxes is valid and the proceedings well conducted, the sale confers a title paramount to all others, and thereby destroys the lien of the United States for the costs of surveying these lands. If, on the other hand, the sale would not confer such a title, it is because there exists no authority to make it.

"At all events, the holder of the equitable title to these lands has a right to prevent a sale which would have the effect of impeding the United States in the assertion of the right to them until these costs are paid.

"We are aware of the use being made of this principle by the companies, who, having earned the lands, neglect to pay these costs in order to prevent taxation." But, continued the court, "The remedy lies with the Congress and is of easy application. * * * The courts can do no more than declare the law as it exists."

We do not believe that these cases are helpful in the situation here presented, since they are founded upon the theory that a tax title, once acquired, divests all interests

and rights, no matter by whom possessed. Minn. Const. art. 9, —1, dealing with the power of taxation, declares that "public property used exclusively for any public purpose shall be exempt from taxation." Obviously, the state's school and swamplands come within that class. But as soon as any such land is sold, usually under long-term payments, the purchaser's land is listed for taxation (as of May 1 after the purchase) and taxed as other real estate. His down-payment interest in the land may be, and usually is, only a small part of the purchase price, with the balance payable [fol. 71] in long-time installments. If he fails to meet the tax burden, anyone may acquire the state's rights at the tax sale or by taking an assignment of the taxes. Upon completion of the usual procedure, as in other cases, the tax certificate holder steps into the shoes of the original purchaser and may complete the performance of the original purchaser and thereby acquire the property. Minn. St. 1941, § 92.51 (Mason St. 1927, § 6323). Practically the same procedure is followed in cases where the land has been sold under contract by railroads. *Id.* § 272.21 (§ 2221). In either event, the tax title holder becomes in law an assignee of the rights of the original purchaser. As such, his tax burdens remain, and his rights and interests are exactly the same as those of other landowners. If there be tax default where no one is willing to take over the tax interests of the state, the practice is to cancel the contract. If it be land owned by the state, all taxes are cancelled and the land re-appraised and sold anew.

9. In North Dakota the county is the agency through which the state collects its real estate taxes. Thus the procedure there is like our own. 6 Dunnell, Dig. § 9124, and cases under notes. In the recent case of State v. Sheridan County,—N. D.—, 6 N. W. (2d) 51, 54-55, it was held:

> "*The mortgage* held by the Board of University and School Lands *was a lien prior to all general taxes*, and any lien or estate that might result from or be based upon such taxes. *Nevertheless, the land was subject to taxation, and it was the duty of the county officers to cause taxes to be assessed against such land the same as against other property subject to taxation.* If the taxes were not paid, and became delinquent, it became the duty of such officers to cause the land to be sold at tax

> sale, and if there were no bidders to bid the same in for, and in the name of, the county. The county had the right to sell and assign the certificate of sale, and if no redemption were made the county had the right to have issued to it a tax deed, after proceedings had as prescribed by law." (Italics supplied.)

And further, in respect to the efficacy of a tax deed, the court said:

> [fol. 72] "Plaintiff (the state) may foreclose such mortgage. But the county may pay the mortgage, or in case of foreclosure, it may make redemption. The county may also sell the land in the manner prescribed by law, and the purchaser will have the right to pay off the mortgage, or in case of a foreclosure, to make redemption."

We can see no distinction in principle between the tax methods employed in our state in respect to state school and swamplands and the state of North Dakota's first mortgage to its Board of University and School Lands. It must be constantly borne in mind that the purchaser of property, whether from the state or the national government, must share the normal tax burdens along with other property owners and upon the same basis.

We have not overlooked such cases as *United States* v. *City of Milwaukee*, 100 F. 828, and other like cases cited by counsel. The holding there was, as in the other cases cited and relied upon, that as long as the government retains the legal title as security for the payment of any part of the purchase money the land is not subject to taxation. Having disposed of the land grant cases, upon which the others are founded, we think it naturally follows, insofar as S. R. A.'s claim to tax immunity goes, that such cases, which are largely those of lower federal courts, must fall with them.

As to *State* v. *Itasca Lbr. Co.* 100 Minn. 355, 111 N. W. 276, this court placed its decision upon the authority of the Milwaukee case and the other cases there cited. The only question presented there was summarized by the court in this fashion (100 Minn. 357, 358):

> "The presentation of the scrip, with an application to locate it upon certain land, gave the applicant the pre-

> ference over other subsequent claimants of the land: but, until the application was approved and acted upon by the commissioner, the applicant acquired no interest, legal or equitable, in the land as against the United States."

Here, under our law, there can be no doubt that S. R. A. has not only a contractual *interest* in the property, but also, by virtue of its contract, the *equitable title* thereto, a right [fol. 73] of the same magnitude as if an outright grant had issued and a purchase money mortgage had been given to secure the unpaid balance. It is equally clear that, so far as the federal government's interests and rights are concerned in these tax proceedings, no claim of the state is made or threatened. *Cf.* City of New Brunswick v. United States, 276 U. S. 547, 48 S. Ct. 371, 72 L. ed. 693.

10. Another reason why we think S. R. A. should not be allowed to escape its tax burden is that it is not in position to champion the federal government's tax immunity. The United States is not a party. It has not been impleaded, nor has it made any effort to come into the case. That it is capable of defending and protecting its own rights of immunity, if any are threatened, no one can doubt. It is S. R. A.'s property that is taxed, not that of its vendor.

S. R. A.'s claim is somewhat similar to that involved in the recent case of Ex parte Kumezo Kawato, —U. S.—, 63 S. Ct. 115, 87 L. ed. 94, 96 (opinion filed November 9, 1942). There the question was whether a resident alien who had suffered injuries while engaged in the performance of his duties on a vessel and who sought allowance for maintenance and cure could maintain an action against the claimants of the vessel, who asserted, and it was admitted, that this country was at war with Japan, and that, since the alien was a native of that country and an enemy alien, "therefore (he) had no 'right to prosecute any action in any court of the United States during the pendency of said war.'" The trial court granted a motion to abate the action on that ground, and the Supreme Court reversed, taking the view that:

> "In asking that the rights of resident aliens be abrogated in their behalf, private litigants in effect seek to stand in the position of government. But only the government, and not the private individual, is vested

with the power to protect all the people, including loyal aliens, from possible injury by disloyal aliens. If the public welfare demands that this alien shall not receive [fol. 74] compensation for his work or payment for his injuries received in the course of his employment, the government can make the decision without allowing *a windfall to these claimants.*" (Italics supplied.)

Here, as much as in that case, S. R. A. should not be allowed "a windfall," as obviously it would be were its position to be sustained. *Cf.* State v. Casualty Mut. Ins. Co. 213 Minn. 220 6 N. W. (2nd) 800 (Opinion filed November 13, 1942).

11. Finding No. 13, so-called, was not within the stipulated facts. It was inserted by the court on its own motion. It is without support as a finding of fact and amounts to no more than a conclusion of law. The facts being without dispute otherwise, it may be stricken as irrelevant to the issues.

Order reversed.

Julius, J. Olson, J.

[fols. 75-93] Petition omitted. Printed side page. 1, ante.

[fol. 94] In District Court of Ramsey County

Amended Petition

Now comes petitioner and respectfully alleges and shows:

I

That petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota.

[fol. 95]

II

That the United States of America was, on the 1st day of May, 1940, and for many years prior thereto, and now is, the owner of a certain tract or parcel of land situate,

lying, and being in the City of Saint Paul, County of Ramsey, and State of Minnesota, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabashaw Streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabashaw street and one hundred and sixty (160) feet on Fifth Street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, 67, and by John Randall and wife by deed dated April 10, 1867, recorded etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

that said real estate is described on the Tax Rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the [fol. 96] South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, and is assessed to S. R. A. Incorporated subject to fee title remaining in the United States of America.

III

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A," and made a part hereof by reference.

IV

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Mes-

sage being attached hereto, marked Exhibit "B," and made a part hereof by reference.

[fol. 97] V

That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C," and made a part hereof by reference.

VI

That petitioner has paid to the Treasurer of the United States under the terms of the said contract of purchase the sum of Six Thousand Fifty-five and 05/100 Dollars ($6,055.05) as of May 26, 1939; t' further sum of Six Thousand Fifty-five and 05/100 Dollars ($6,055.05) with interest thereon at the rate of four percent (4%) per annum as of the 26th day of February, 1940, and that there was still due and owing to the United States of America on May 1, 1940 the sum of One Hundred Eight Thousand, Nine Hundred Ninety and 90/100 Dollars ($108,990.90) and that petitioner on May 1, 1940 was not entitled to receive from the United States of America through the Director of Procurement under the terms of said contract of purchase a quit claim deed conveying title to the property above described.

[fol. 98] VII

That the title to all of the premises above described was at all times herein mentioned and now is in the United States of America, and that the said premises are immune and exempt from taxation by the State of Minnesota or by the County of Ramsey under and by virtue of Article 4, Section 3 of the Constitution of the United States and by virtue of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3rd day of March, 1849 and by virtue of the Act of Congress authorizing a state government for the territory of Minnesota, adopted by the Congress of the United States on the 26th day of February, 1857, and by virtue of Article 2, Section 3 of the Constitution of the State of Minnesota and by vir-

tue of Sections 1977 and 1979 Mason's Minnesota Statutes (Minnesota Statutes 1941, Section 272.03).

VIII

Notwithstanding that said property is exempt and immune from taxation by the State of Minnesota or the County of Ramsey, the said real estate so hereinbefore described was valued by the assessing officers of Ramsey County as of May 1, 1940, in the sum of Two Hundred Seventy Seven Thousand Six Hundred Dollars ($277,600.00), its classified [fol. 99] value being up upon the assessment lists at One Hundred Ele en Thousand, Forty Dollars ($111,040.00), to which was applied the tax rate of ninety-nine and ninety-eight one hundredths (99.98) mills, resulting in a tax in the sum of Eleven Thousand One Hundred One and 78/100 Dollars ($11,101.78).

IX

That the property above described was assessed and taxed on the records of Ramsey County, Minnesota "subject to fee title remaining in the United States of America"; that no authority exists by statute or otherwise to levy and assess a tax upon an interest in real estate in the State of Minnesota other than the whole interest therein.

X

That the action of the County of Ramsey and State of Minnesota in levying a tax upon said premises deprives this petitioner of a privilege and immunity secured to it under the Constitution of the United States; deprives it of property without due process of law and denies to it the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

[fol. 100] XI

That said real estate has been partially, unfairly, and unequally assessed, and has been assessed at a value greater than its real or actual value.

Wherefore, Petitioner prays for an order of the within Court:

1. Determining that the title to the premises herein described is in the United States of America, and that the

same are immune and exempt from taxation by the State of Minnesota or the County of Ramsey until the purchase price therefor is paid in full to the United States and the petitioner is entitled to a conveyance from the United States.

2. Reducing the full and true value of said premises to the actual value thereof;

3. For such other and further relief as may to the Court seem just and proper; and

4. For its costs and disbursements herein.

Dated: This 23 day of April, 1941.

S. R. A. Incorporated, by Robert E. Albrecht, President, Petitioner.

[fol. 101] *Duly sworn to by Robert E. Albrecht. Jurat omitted in printing.*

(Exhibits A, B and C attached to this amended petition are identical with Exhibits A, B and C attached to original petition at folios 8 to 21 of this Record.)

[fol. 102] IN DISTRICT COURT OF RAMSEY COUNTY

STIPULATION OF FACTS

Whereas a petition to review the taxes for the year 1940 was filed herein by the above named petitioner raising two defenses (1) the immunity of the property hereinafter described from taxation and (2) that the said property was partially, unfairly and unequally assessed and assessed at a value greater than its real or actual value, and

Whereas the matter was heard by the Court on the question of immunity of the property from taxation only, the other defenses relating to valuation being expressly reserved for determination at a later date in the event that the State prevailed and findings of fact, conclusions of law and an order for judgment were entered that the title to the premises hereinafter described was in the United States of America on May 1st, 1940, that the premises were exempt from taxation by the State of Minnesota or the County of Ramsey and that the tax assessed against said premises for the year 1940 was illegal and void, and

Whereas on appeal to the Supreme Court of the State of Minnesota from an order of this Court denying the State' motion for a new trial, a decision was entered reported in 213 Minnesota 487; 7 Northwestern Reporter 2nd 484; by the Supreme Court, reversing the order of this court, and [fol. 103] the matter has been remanded to this court for a new trial, and

Whereas the parties hereto have agreed that the value of the premises hereinafter described on May 1st, 1940 was Two Hundred, Twenty-five Thousand Dollars ($225,000.00).

Now Therefore, it is hereby stipulated by and between the undersigned, the attorneys for the respective parties hereto,

I

That S. R. A. Incorporated is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and is the petitioner in the above entitled cause.

II

That the premises which are the subject of the above entitled petition are described as follows:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed [fol. 104] to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867 in Book P. P. of Deeds, page 65, 66 & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

and are situate in the City of Saint Paul, County of Ramsey, and State of Minnesota, at the intersection of Fifth and Wabasha Streets in said City; that the real estate is described on the tax rolls of Ramsey County, Minnesota, as

the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota.

III

That for tax purposes the premises so described are assessed upon the records of Ramsey County, Minnesota, to S. R. A. Incorporated "subject to fee title remaining in the United States of America."

IV

That the premises above described were acquired by the [fol. 105] United States of America by deed from various parties in the year 1867, and that the legal title to the said premises is now and ever since 1867 has been in the United States of America, save as the same may have been affected by the transactions with S. R. A. Incorporated as hereinafter set forth:

That in or about the year 1870 a building was erected upon the above described premises by the United States of America, and for many years thereafter the premises were occupied by the United States of America as a post office and as an office for various departments of the United States, including the Department of Internal Revenue; that for some years prior to the 1st day of April, 1939, neither the building on the premises nor any portion of the premises had been occupied by the United States of America or by any other person whatsoever.

V

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A" and made a part hereof by reference.

[fol. 106] VI

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the

United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B" and made a part hereof by reference.

VII

That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C" and made a part hereof by reference.

VIII

That subsequent to the 26th day of May, 1939, the building which had been erected upon the premises by the United States of America was razed, demolished, and destroyed by S. R. A. Incorporated; that subsequent thereto and prior to the 1st day of May, 1940, a building had been erected upon said premises by S. R. A. Incorporated; that on the 1st day of May, 1940, stores in said building had been leased [fol. 107] by S. R. A. Incorporated to various tenants, and the balance of the premises not covered by the building had been leased for automobile parking purposes, and that all of said premises on May 1, 1940, was used for purposes of a commercial nature, and no part or portion thereof was devoted to the business or activities of the United States of America; that the petitioner collected and retained the rents for its own account.

IX

That S. R. A. Incorporated had paid to the United States of America the payment accompanying the proposal of April 17, 1939, of $5,755.05; the payment accompanying the supplemental proposal of April 21, 1939, of $300.00; the payment due February 26, 1940, of $6,055.05, with interest thereon at 4% per annum; and on May 1, 1940, no other payments had been made to the United States of America, and there was then due and owing to the United States of America the sum of $108,990.90 on account of the purchase price.

X

For the purposes of determining the issue here submitted and without prejudice to any other issue, it is stipulated that

[fol. 108] the property in question was assessed and taxed as all other real property in the County and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the statutes of the State of Minnesota; that the tax records of said Ramsey County, Minnesota, of taxes levied and assessed for the year 1940 were duly certified on January 6, 1941, by Eugene A. Monick, County Auditor of said Ramsey County, including the property in question, to be a correct list of the taxes levied upon the real property in said County of Ramsey for the year 1940; and that on said last mentioned date Elsa M. Obst duly certified that she received the said tax records from the said County Auditor; and that said tax records contained the following entries pertaining to the assessment of the property in question, to-wit: assessed in the name of "S. R. A. Incorporated (subject to the fee title remaining in the United States of America)"; description of property; the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota; assessed valuation $111,040; general tax $11,101.78; total general tax $11,101.78; street sprinkling $27.97, total tax $11,129.75; and that said tax records have been in the possession of the said County [fol. 109] Treasurer for the collection of said taxes ever since said last mentioned date. That the tax rate applicable to the property in question for the year 1940 was 99.98 mills upon the assessed valuation.

XI

That it is agreed that for the purposes of this litigation the full and true value of the premises described in Paragraph II hereof as of May 1, 1940 was $225,000.00; that such valuation of $225,000.00 is the full and true value without deduction of any amount on account of the balance remaining due on May 1, 1940 to the United States of America under the contract hereinbefore described.

Dated: This 11th day of April, 1944.

James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for County of Ramsey and State of Minnesota. Otis, Faricy & Burger, Attorneys for Petitioner.

(Exhibits A, B and C attached to this stipulation are identical with Exhibits A, B and C attached to original petition at folios 8 to 21 of this Record.)

[fol. 110] In District Court of Ramsey County

Findings of Fact and Conclusions of Law

The petitioner having filed a petition to review the taxes for the year 1940 as provided by Minnesota Statutes 1941, Section 278.01 (Mason's 1940 Supplement, Section 2126-1), the matter having been tried and resulting in Findings of Fact and Conclusions of Law in favor of the petitioner, and after appeal to the State Supreme Court the matter having been remanded to this court for re-trial as appears from the decision of that court reported in 213 Minn. 487, 7 N. W. Rep. 2nd 484, came on regularly before the undersigned, one of the judges of the above named court on the 12th day of April, 1944. The State of Minnesota was represented by James F. Lynch, County Attorney, and Andrew R. Bratter, Assistant County Attorney; the petitioner, S. R. A. Incorporated, was represented by Roland J. Fariey, its attorney.

The petitioner having stipulated to the facts and the court having heard counsel and being fully advised in the premises makes the following:

[fol. 111] Findings of Fact

I

That S. R. A. Incorporated is a corporation duly organized and existing under the laws of the State of Minnesota.

II

That the description of the premises in question is, the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, Capitol of Minnesota, also known as the Original Town of Saint Paul, which premises are situate in the City of Saint Paul in said County and State on the northwest corner of 5th and Wabasha Streets in said city.

III

That the legal title to said premises has been in the United States of America since 1867; that since 1870 the said premises have been improved and were occupied by various departments of the government of the United States and particularly by the Department of Internal Revenue; that for some years prior to 1939 the premises were vacated [fol. 112] and were not used or required for governmental purposes; and that pursuant to Act of Congress the said property was declared by the Treasury Department of the United States to be in excess of its needs and was offered for sale.

IV

That on or about the 26th day of May, 1939, a contract for deed was entered into between S. R. A. Incorporated, and the United States of America under the terms of which the petitioner, S. R. A. Incorporated, agreed to pay to the United States of America as the purchase price of said premises, the sum of One Hundred Twenty-one Thousand, One Hundred one Dollars ($121,101.00) upon terms particularly set forth in the stipulation of the parties hereto, requiring payments in installments for a period of ten years and until May 26, 1949; and the United States of America agreed that when the total purchase price had been paid as provided, and the terms and conditions of the contract for deed had been complied with, to deliver to S. R. A. Incorporated, or its nominee, a quit claim deed to the premises and to deliver to it a marketable title, free of all encumbrances except such as may have accrued against the petitioners interest in the property subsequent to May 26, 1939; that under the terms of the same contract S. R. A. Incorporated was entitled to take immediate possession of the [fol. 113] premises, to sell, assign or lease any part or all of said premises without the approval of the United States of America, but subordinate to the interests of the United States, to obtain a deed to portions of the premises less than the whole upon advance payment of a portion of the purchase price to be determined by the United States of America; and that said contract is still in full force and effect.

There remained unpaid under said contract on May 1, 1940 the sum of $108,990.90.

V.

That subsequent to the 26th day of May, 1939, and prior to the 1st day of May, 1940, the petitioner S. R. A. Incorporated, took possession of said premises, razed, demolished and destroyed the building and improvements on said premises and erected thereon a new building, consisting of a number of stores, which on the 1st day of May, 1940 were and still are leased by the said petitioner to various tenants; the remainder of the premises not covered by the building, were and still are leased to another tenant for automobile parking purposes; and that all of said premises on May 1, 1940 were and still are used for the private commercial purposes of S. R. A. Incorporated, and no part thereof was devoted to the business or activities of the [fol. 114] United States of America; that the petitioner collected and retained the rents for its own account.

VI

The property in question was assessed and taxed as all other real property in said county and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the statutes of the State of Minnesota; and that the tax records of said Ramsey County for the year 1940 contain the following entries pertaining to the assessment of the property in question, to-wit; assessed in the name of "S. R. A. Incorporated (but subject to the fee title remaining in the United States of America)" description of property: "The East Ten (10) feet of the South One hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota; that it was agreed between the parties hereto that the true and full value of said premises on the first day of May, 1940 was the sum of $225,000.00, without deduction of any amount on account of the balance remaining due to the United States of America under the contract hereinbefore described; that the assessed value of said premises on said last mentioned [fol. 115] date was the sum of $90,000.00; and that the tax rate for said year was 99.98 mills, resulting in a tax upon said premises for the year 1940 in the sum of $8,998.20, in

addition to an assessment for street sprinkling in the sum of $27.97, being a total of $9,026.17.

CONCLUSIONS OF LAW

I

That the assessment of the said property was duly made in accordance with the statutes of the State of Minnesota and was assessed and taxed as all other real property in said Ramsey County and upon the same rates as other like property.

II

That the petitioner, S. R. A. Incorporated, has, and on May 1, 1940 had, the equitable title to the said property, and that the United States of America has, and on said last mentioned date, had the legal title thereto, in trust for said petitioner as security for payment of the balance of the purchase price.

III

That said premises are not now and on May 1, 1940 were not immune or exempt from taxation by the State of Minnesota.

[fol. 116]

IV

That the State of Minnesota is entitled to judgment against the property described as follows: The East Ten (10) feet of the South One hundred five (105) feet of Lot Nine (9), also the South One Hundred five (105) feet of Lots Ten (10), Eleven (11) and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota, which addition is sometimes referred to as the Original Town of Saint Paul, for taxes for the year 1940 in the sum of $9,026.17, which amount is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim or lien, of whatever nature in law or equity, of every person, company, or corporation, subject however, to the prior rights, liens and interests of the United States of America; and that unless such amount be paid, the land hereinbefore described shall be sold, as provided by law, to satisfy the amount to which it is liable, subject however, to the prior rights, liens and interest of the United States of America.

Let judgment be entered accordingly.

Dated at St. Paul, Minnesota, this 14th day of April, 1944.

J. C. Michael, Judge of District Court.

A stay of 20 days is hereby granted.

Michael, J., Judge of District Court.

[fol. 117] In District Court of Ramsey County

Judgment—Filed May 8, 1944

The above entitled matter having been heard before the Honorable James C. Michael, one of the Judges of the above named court, on the 12th day of April, 1944 pursuant to a petition filed by S. R. A. Incorporated, a corporation, to review the taxes for the year 1940 as provided by Minnesota Statutes 1941, Section 278.01 (Mason's 1940 Supplement, Sec. 2126-1), resulting in the filing of findings of fact and conclusions of law herein directing the entry of judgment in favor of the State of Minnesota,

Now Therefore,

It Is Hereby Adjudged, That the parcel of land herein after described, is liable for taxes to the amount set opposite the same, as follows:

Description	Amount
The East Ten (10) feet of the South One Hundred five (105) feet of Lot Nine (9), also the South One hundred five (105) feet of Lots Ten (10), Eleven (11) and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota, which addition i sometimes referred to as the Original Town of Saint Paul	$9,026.17

[fol. 118] The amount of taxes to which, as hereinbefore stated such parcel of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or equity, of every person, company, or corporation, subject however, to the prior rights, liens and interests of the United States of America; and It Is Adjudged that, unless the amount to

which such parcel is liable be paid, such parcel be sold, as provided by law, to satisfy the amount to which it is liable, subject however, to the prior rights, liens and interests of the United States of America.

Dated this 8th day of May, 1944.

J. J. Fitzgerald, Clerk of the District Court, County of Ramsey.

[File endorsement omitted.]

[fol. 119] In District Court of Ramsey County

Notice of Appeal to Supreme Court of State of Minnesota

To James F. Lynch, County Attorney, and Andrew R. Bratter, Assistant County Attorney, attorneys for the County of Ramsey and State of Minnesota, and to J. J. Fitzgerald, Clerk of the aforesaid Court:

Take Notice that the petitioner, S. R. A. Incorporated, appeals to the Supreme Court of the State of Minnesota from the judgment and the whole thereof, entered herein on May 8, 1944.

Otis, Farley & Burger, Attorneys for Petitioner, W-1862 First Nat'l Bank Bldg., St. Paul, Minnesota.

[fol. 120] In Supreme Court of Minnesota

[File endorsement omitted]

In re Petition of S. R. A. Inc. to have determined its claim that the property herein described is exempt from taxation, etc., for 1940.

22952 Syllabus

1. The doctrine of the federal land-grant cases is the result of a special statutory creation designed by Congress to implement the function of the federal government in settling and developing the public domain and has no application to the vendor-vendee relationship under an executory contract for the sale of land by the sovereign.

2. The entryman by his entry under the federal Homestead Act acquires only a right of possession as against tres-

passers and all others except the United States; he acquires no equitable title or equitable interest in the property until he has complied with all the statutory conditions essential for obtaining a patent; and the vesting of the equitable estate in the entryman is simultaneous with the acquirement of an absolute right to a patent.

3. An equitable title under an executory sales contract passes from the vendor to the vendee in its entirety and not on a fractional or piecemeal basis.

4. The general rule that a contract for the sale of land, part of the purchase price being paid, vests in the vendee the equitable title with the bare legal title remaining in the vendor as security for the payment of the purchase price, [fol. 121] applies to contracts where the vendor is the federal government as well as to contracts between citizens.

5. The character or status of the owner of the equitable title and not that of the holder of the legal title determines whether the equitable estate is subject to taxation, and neither the vendor's liability for nor immunity from taxation passes with the equitable title to the vendee.

6. A tax levy upon the vendee's equitable interest is not, directly or indirectly, a tax upon the vendor's legal estate.

7. Without violation of the implied constitutional immunities from taxation, a state may levy a uniform and nondiscriminatory tax upon the equitable interests of purchasers of property from the United States under executory sales contracts, although such sovereign vendor might receive a higher price therefor if it were known in advance that a purchaser's equity would not be subject to taxation.

8. A state may levy a tax upon a limited interest or estate in real property and, upon default, hold a tax sale of such limited interest or estate, subject to, and without impairing, an outstanding superior lien or other estate.

9. The difference between the security right obtained under a mortage and that provided for by the retention of the legal title under an executory sales contract is a matter of form only and not of substance.

The judgment appealed from is affirmed.

[fol. 122] OPINION—Filed April 13, 1945

MATSON, Justice:

This is an appeal from a judgment of the district court determining that the equitable title to certain real estate in St. Paul was on May 1, 1940, vested in the petitioner, S. R. A., Inc., and that the legal title thereto was then vested in the United States in trust for said petitioner as security for the payment of the balance of the purchase price, and further determining that said premises were not exempt or immune from the 1940 taxes assessed and levied on said date. Pursuant to the original petition filed for a review of the taxes for the year 1940 as provided by Minn. St. 1941, § 278.01 (Mason St. 1940 Supp. § 2126-1), hearing was had thereon which resulted in findings of fact and conclusions of law in favor of the petitioner. Upon appeal, the order of the lower court was reversed and the matter was remanded for retrial, as appears from our former decision in In re Petition S. R. A. Inc. 213 Minn. 487, 7 N. W. (2d) 484, and upon such retrial the aforesaid judgment was entered. The only question now raised is whether our former decision denying tax exemption for said premises is the law of the case and controlling on this appeal in the light of the recent decision of the United States Supreme Court in United States v. County of Allegheny (1944) 322 U. S. 174, 64 S. Ct. 908, and certain other decisions cited by petitioner.

For convenience on this appeal, we shall summarize the facts, a more complete statement of which may be found in our former opinion. On May 26, 1939, the petitioner, as vendee, entered into an executory sales contract with the United States, as vendor, for the purchase of the old post-office building in St. Paul for $121,101, to be paid, in addi-[fol. 123] tion to a down payment, in annual installments of $9,500 each during the succeeding nine years, and upon the making of the final payment on May 26, 1949, the United States agreed to convey a marketable title to said premises to the petitioner by quitclaim deed. Upon execution of the contract the petitioner took full possession, razed the old building, erected a new one for commercial rental, and otherwise entered into the full beneficial use of the premises. On May 1, 1940, Ramsey county assessed the premises upon the same basis as other like property, listing

it for taxation as being owned by S. R. A., Inc. "*subject to fee title remaining in the United States of America.*" Instead of paying the taxes so levied, petitioner brought these proceedings. The issue as to the full and true valuation of said premises was determined by stipulation.

The decision of United States v. County of Allegheny, 322 U. S. 174, 179, 64 S. Ct. 908, 912, hereinafter designated as the Mesta case, is in our opinion not controlling. Mesta Machine Company was engaged in the manufacture of large field guns for the national government under a cost-plus-and-fixed-fee contract in which taxes levied against Mesta "upon the transaction of this purchase of guns" was a reimbursable cost item. Mesta owned a plant with certain machinery. Additional machinery, belonging to the United States, was leased to Mesta and affixed to the realty so as to be removable without injury to the premises. Allegheny county levied a real property ad valorem tax against Mesta's mill and in valuing the real estate for taxation specifically included the value of the machinery owned by the federal government. The Pennsylvania Supreme Court (Mesta Mach. Co. Case, 347 Pa. 191, 32 A. [2d] 236) held that the tax was levied on the mill as an entity; that, since the record title to the land was in Mesta regardless of who owned the machinery, its value was property included as part of the real-estate valuation; and that, although the [fol. 124] machinery was included in the valuation, the assessment was not against the United States or its property, but only against Mesta and its realty holdings. Upon appeal by Mesta, with the United States intervening, the United States Supreme Court held the assessment invalid as a violation of the federal constitution insofar as it purported (322 U. S. 192, 64 S. Ct. 918) "to authorize taxation of the property interests of the United States in the machinery in Mesta's plant, or to use that interest to tax or to enhance the tax upon the Government's bailee." This decision involves facts and issues entirely different from the instant S. R. A. case and is to be distinguished in the following particulars: (1) Both the legal and equitable title to the machinery, valued as part of the assessed tax valuation, were in the United States; (2) the entire plant, of which the machinery was an essential part, was by contract employed as a means to discharge the important national function of waging war; (3) the inclusion of the value of the machinery enhanced the burden of the lien

on the underlying land, and if, by reason of this enhancement, it became necessary to collect the tax by selling the land, the result would be as disastrous to the war effort as if the machinery itself were sold; (4) Mesta as a bailee of the machinery was under a duty to assert the defense of tax immunity to protect the property interests of its bailor, the United States, from unlawful burdens.

Other decisions cited by the petitioner are hereinafter distinguished in our consideration of the land-grant doctrine.

1. Petitioner contends that the instant case is controlled by the decision of Irwin v. Wright, 258 U. S. 219, 42 S. Ct. 293, 66 L. ed. 573. We submit that this decision, and all the land-grant cases in general, are not in point. There is little if any similarity between the interest of an entryman [fol. 125] as a beneficiary of a land grant and the vendee in a contract of purchase and sale. In the former, the entryman acquires neither the equitable title nor the legal fee until he has completely fulfilled the conditions which entitle him to a patent, but in the case of the vendee the equitable title vests at once although the bare legal title remains in the vendor as security for the payment of the purchase price.

An examination of the land-grant acts in general reveals that the equitable title was purposely withheld from the entryman until he had complied with all conditions necessary for obtaining a patent, and this was done as a matter of congressional intent to insure that the public domain would be given only to stable citizens who had actually demonstrated that they were desirous and capable of establishing permanent homes. Similar considerations governed grants for the construction of railroads. In other words, we have a special statutory creation designed for developing the public domain. Obviously, the disposal of public lands was not a matter of sale at all but rather of a gift on condition, and this gift on condition was not according to the common-law concept, but according to certain statutory conditions designed to satisfy a special need. Missouri, Kansas, and Texas Ry. Co. v. Kansas Pacific Ry. Co. 97 U. S. 491, 24 L. ed. 1095. As a unique statutory creation, it has had nothing in common with a written contract for the sale of land except that it ultimately effected a transfer of title. In some respects, however, the interests

of the entryman under this statutory creation may be compared to that of a donee under a parol gift of land under the statute of frauds.[1]

An examination of the Homestead Act in particular (see, [fol. 126] 43 U. S. C. A., §§ 161-302), anent which most of our land-grant decisions have been made, indicates that congress has thereby created a set of legal and equitable relationships between the homestead entryman and his government which bear very little resemblance to the legal and equitable principles governing a vendor and vendee. The act constitutes the government's standing offer to donate and convey a limited portion of the public domain to certain natural, though unidentified, persons who are able to qualify themselves to accept the offer by complying with specified conditions precedent. As a preliminary to qualifying himself to accept the offer, the entryman must identify himself and the homestead premises he desires by an act of registration or entry. Until he has qualified himself for acceptance of the offer by complying with the residential, improvement, cultivation, and other statutory requirements, he has no vested right against the government. Unlike the vendee under a contract of purchase, he has no devisable estate, no right of alienation except for specified public purposes, no right to change his residence, no right to declare himself a trustee of the land for another, and, with certain statutory exceptions, he may not even intermarry with an entrywoman. Unlike the vendor, the government as offering donor on condition has no right of specific performance and no right to damages for breach of condition; in fact, there is no binding contract. The entryman is free at all times, without penalty or liability of any kind, to abandon his efforts to qualify himself for acceptance of the government's offer to convey by patent.

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[1] "* * * It has been said that a parol gift of land is on the same footing as a parol sale of land, and that in order to take a parol gift of land out of the statute of frauds possession must be taken in pursuance of the gift, and *as a further condition to the consummation of the equitable right and title, the donee must have made improvements of a valuable and permanent character, induced thereto by the promise to give the land.*" (Italics supplied.) 24 Am. Jur., Gifts, § 68. See, 38 C. J. S., Gifts, § 57.

In Hall v. Russell, 101 U. S. 503, 25 L. ed. 829, we have a typical land-grant case involving the contsruction of the Oregon Donation Act to determine the congressional intent and the property rights resulting thereunder. One Loring, a single man, in 1852 settled on the land with a view to becoming its owner under the operation of the act. He had all the qualifications necessary to enable him to take and hold under the act, but died after a residence on the land of [fol. 127] less than a year, leaving a will whereby he devised his entire estate, with minor exceptions to one Hall. The question for determination on appeal was whether Loring had a devisable estate. (See, Oregon Donation Act [9 stat. c. 76], the relevant sections of which provide [2].) Mr. Chief Justice Waite, in holding that settler Loring had no devisable estate, said (101 U. S. 509, 25 L. ed. 831):

> "The opening words of sect. 4 are 'that there shall be, and hereby is, granted.' This is appropriate language in which to express a present grant, but as [fol. 128] was well remarked by Mr. Justice Field for the court in Missouri, Kansas, and Texas Railway Company v. Kansas Pacific Railway Company (97 U. S. 491), 'It is always to be borne in mind, *in con-*

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[2] "Sec. 4. * * * That there *shall be, and hereby is, granted* to every white settler or occupant of the public lands, * * * now residing in said Territory, or who shall become a resident thereof on or before the first day of December, eighteen hundred and fifty, *and who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of this act*, the quantity of one half section, * * *: *Provided, further*, That all future contracts by any person or persons entitled to the benefit of this act, for the sale of the land to which he or they may be entitled under this act before he or they have received a patent therefor, shall be void; * * *.

"Sec. 5. * * * That to all white male citizens of the United States * * * emigrating to and settling in said Territory between the first day of December, eighteen hundred and fifty, and the first day of December, eighteen hundred and fifty-three; * * * *who shall* * * *, *comply with the foregoing section* and the provisions of this law, *there shall be, and hereby is, granted* the quantity of one

struing a congressional grant, that the act by which it is made is a law as well as a conveyance, and that such effect must be given to it as will carry out the intent of Congress.' There cannot be a grant unless there is a grantee, and consequently there cannot be a present grant unless there is a present grantee. If, then, the law making the grant indicates a future grantee and not a present one, the grant will take effect in the future and not presently. * * *

"Coming then to the present case we find that the grantee designated was any qualified 'settler or occupant of the public lands * * * who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of the act.' *The grant was not to a settler only, but to a settler who had completed the four years of residence, &c., and had otherwise conformed to the act.* Whenever a settler qualified himself to become a grantee, he took the grant and his right to a transfer of the legal title from the United States became vested.

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quarter section, * * * if a single man; or if married, * * * the quantity of one half section, * * *."

"Sec. 7. * * * That within twelve months after the surveys have been made, or, where the survey has been made before the settlement, then within twelve months from the time the settlement was commenced, each person claiming a donation right under this act shall prove to the * * * surveyor-general, * * * that the settlement and cultivation * * * had been commenced, specifying the time of the commencement; and at any time *after the expiration of four years from the date of such settlement,* * * * *shall prove in like manner,* * * *the fact of continued residence and cultivation* required by the fourth section of this act; and upon such proof being made, * * * patents shall issue for the land * * *.

"Sec. 8. * * * That upon the death of any settler before the expiration of the four years' continued possession required by this act, all the *rights* of the deceased under this act shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act up to the time of the death of such settler shall be sufficient to entitle them to the patent." (Italics supplied.)

But until he was qualified to take, there was no actual grant of the soil. The act of Congress made the transfer only when the settler brought himself within the description of those designated as grantees. *A present right to occupy and maintain possession*, so as to acquire a complete title to the soil, *was granted* to every white person in the Territory having the other requisite qualifications, *but beyond this nothing passed until all was done that was necessary to entitle the occupant to a grant of the land.* Whether the fee passed out of the United States before the claim was 'proved up,' it is not necessary now to consider. For the purposes of the present suit it is enough to show that *the occupant got no title himself, beyond that of a mere right of possession, until he had completed his four years of continued residence and cultivation.*

• • • • • • •

"Another provision is equally significant: 'All future contracts by any person entitled to the benefit of this act, for the sale of the land to which he may be entitled under this act before he or they have received a patent therefor, shall be void.' This must refer to sales after the necessary residence and cultivation were complete, because *the grant was only to a settler 'who shall have resided upon and cultivated the same for four consecutive years.'* • • •

• • • • • • •

"We conclude, therefore, that under sect. 4 *there was no grant of the land to a settler until he had qualified himself to take as grantee by completing his four years of residence and cultivation, and performing such other acts in the mean time as the statute required* [fol. 129] *in order to protect his claim and keep it alive. Down to that time he was an authorized settler on the public lands, but not a grantee. His rights in the land were statutory only, and cannot be extended beyond the just interpretation of the language Congress has used to make known its will.*" (Italics supplied.)

In Irwin v. Wright, 258 U. S. 219, 232, 42 S. Ct. 293, 298, 66 L. ed. 573, 589, Mr. Chief Justice Taft recognized the

land-grant entryman's interest as a special statutory creation when he said:

> "* * * We think, therefore, that the reason for the rule, making the acquisition of the equitable title the line between non-taxability and taxability, is stronger in case of reclamation homestead entrymen than in the instances where, before the Reclamation Act, it always applied. Moreover, the confusion caused in the past by the taxation, when specifically permitted, of indefinite and inchoate interests of the beneficiaries of government land grants, should prevent an inference of the congressional intention to depart from the rule requiring an equitable title in the entryman before state taxation, unless a purpose to permit earlier taxation is express or strongly implied."

Obviously, the congressional intent as expressed in the land-grant statutes is that the *equitable* title shall pass to the entryman only upon full compliance with all conditions necessary for obtaining a patent, and that the equitable title and the *right to a patent* shall be inseparable twins in their passage from the government to the entryman. It is difficult to understand how the principle of this special statutory creation ever came to be applied to the vendor-vendee relationship in cases involving the right of a state to tax the interest of the vendee under a contract where the federal government is the vendor. Typical of these cases are United States v. City of Milwaukee (C. C.) 100 F. 828; Lincoln County v. Pacific Spruce Corp. (9 Cir.) 26 F. (2d) 435; Mint Realty Co. v. Philadelphia, 218 Pa. 104, 66 A. 1130; ABR Corp. v. City of Newark, 131 N. J. L. 147, 35 A. (2d) 473; and Ken Realty Co. Inc. v. Johnson (5 Cir.) 138 F. (2d) 809. The confusion apparently has [fol. 130] arisen from the erroneous assumption that, because the entryman or beneficiary under a federal land grant acquires as against the sovereign no equitable title until he has complied with all conditions necessary to obtain a patent, the same result necessarily follows under a contract for deed *where the sovereign is the vendor*, and that therefore no equitable title vests in the vendee until he has performed all the contract terms and conditions prerequisite for obtaining a deed. With this error as a foundation, it has been further assumed that the decisions

in the land-grant cases, of which Irwin v. Wright, *supra*, is typical, establish the principle that under no circumstance is the interest of the vendee subject to state taxation until he has acquired, by complete performance of all contract terms and conditions, a right to a deed of conveyance on the theory that until such time both the equitable title and the legal fee remain in the sovereign vendor. Clearly, the land-grant cases are not in point and establish no principle applicable to contracts for the outright sale of government property. Obviously, the legal consequences of a sales contract are not determined by the special statutory provisions enacted by congress to govern the disposal of the public domain.

2. From the making of his entry until he satisfies the conditions requisite for obtaining a patent, the entryman has no vested equitable right by way of title, but only a right of possession as against trespassers and all others except the United States. His right to remain on the land in order to perform the conditions requisite for obtaining a patent may be regarded as an inceptive or inchoate title from the standpoint that only his own failure to qualify will prevent him from obtaining a vested equitable title accompanied by the right to a patent. See, Knapp v. Alexander-Edgar Lbr. Co., 237 U. S. 162, 35 S. Ct. 515, [fol. 131] 59 L. ed. 894. But see, Norton v. Evans, 82 F. 804 (8 Cir.) 27 C. C. A. 168. In some of the land-grant cases the right to remain on the land to perform the statutory conditions has been loosely referred to as an equitable title, but it is to be noted that in these very cases there had *not* been a full performance of all the conditions necessary for the accrual of a *right* to a patent, and, therefore, the equitable title had not passed to the grantee. For example, in the case of N. P. R. Co. v. Traill County, 115 U. S. 600, 6 S. Ct. 201, 29 L. ed. 477, the doctrine of which can best be ascertained by a perusal of the two decisions on which it is based, namely, Railway Co. v. Prescott, 16 Wall. 603, and Railway Co. v. McShane, 22 Wall. 444, the right to a patent had not been perfected, and, therefore, both the equitable and the legal title remained in the United States as security for the payment of the costs of making the surveys. In effect, the lien was both equitable and legal in its nature, and obviously the court could not allow a state tax upon an equitable estate still retained by the sovereign. Mis-

understanding and confusion result only when we forget that as a statutory creation the equitable title and the right to a patent are Siamese twins, and one does not go without the other. In the land-grant cases, we speak of a complete equitable title only in the sense that the right to the passage of such title has fully accrued.

3. Further confusion resulted from the plausible though erroneous theory, adopted by some courts, that the entryman acquired an equitable title piecemeal, or on the installment plan, until he earned a *perfect* or *complete* title by having complied with all the conditions prerequisite to obtaining a patent. The entryman in fact acquired nothing until the instant he was entitled to everything. If his com- [fol. 132] pliance with the statutory conditions fell short in any essential he had nothing, but the instant he had fully complied with them the equitable estate burst into full blossom as his property, and simultaneously therewith he acquired the right to a patent. Later, this anomalous doctrine of acquiring a *complete* equitable title on the installment plan was applied to the interest of the vendee under a contract for deed for the sale of land by the sovereign. In Lincoln County v. Pacific Spruce Corp. (9 Cir.) 26 F. (2d) 435, *supra*, the court in applying this theory held that only he who had acquired a *perfect* equitable title was subject to taxation. The court in Ken Realty Co. Inc. v. Johnson (5 Cir.) 138 F. (2d) 809, *supra*, however, expressly refused to follow the Lincoln County case and carried the theory to its logical conclusion by arriving at the curious result of holding the vendee subject to taxation on that fraction of the equitable title acquired to the date of each annual tax levy. It was held that the value of such fractional equity as a taxable interest was to be (138 F. [2d] 812) "measured each tax year by the value of the whole property diminished by the amount of unpaid purchase money." The wrongful interpretation of the principle of the land-grant cases and its misapplication to contracts for the sale of land by the sovereign have been bad enough without confusing the issue still further by giving birth to the doctrine that the equitable title passes from the vendor to the vendee on a piecemeal basis. Fundamental legal principles are not to be distorted merely because the sovereign is a party to the transaction. We choose to stand on the well-established principle that the equitable estate,

in its entirety, passes immediately to the vendee at the moment the contract goes into effect, and the bare legal title for security purposes remains in the vendor. The vendee's equitable title may be divested for failure of the [fol. 133] vendee to perform the conditions of the contract; but, until divested, such equitable title is wholly in the vendee. Village of Hibbing v. Commr. of Taxation, 217 Minn. 528, 14 N. W. (2d) 923; Town of Wolf River v. Wisconsin Michigan Power Co., 217 Wis. 518, 259 N. W. 710, 98 A. L. R. 1369. The instant vesting of the entire equitable title in the purchaser is consistent with his right to enjoy the entire use and benefit of the property (inclusive of both profits and increments in value) although he has paid only a fraction of the purchase price.

Aside from the fundamental difference between the interest of an entryman under a land grant and the interest of a vendee in a contract for deed, there is a further distinction between the instant case and the land-grant cases based on the fact that entirely different governmental policies and objectives are involved. The settlement and development of the public domain entailed the exercise of a major federal function that is not for a moment to be confused with the humdrum task of disposing of useless post-office property, useless in the sense that it no longer serves any governmental function. In Irwin v. Wright, *supra*, Mr. Chief Justice Taft called specific attention to the importance of the land-grant policies when he said (258 U. S. 231, 42 S. Ct. 298, 66 L. ed. 589): "The care with which the Government has thus framed its land policy to protect and encourage the homesteader is shown further in Ruddy v. Rossi, 248 U. S. 104, 105."[3] The function of settling the

[3] In Ruddy v. Rossi, 248 U. S. 104, 105, 39 S. Ct. 46, 63 L. ed. 148, 150, which upheld the constitutionality of § 4 of the Homestead Act of May 20, 1862 (Rev. Stat. § 2296), providing that no lands acquired under the act should ever become liable for the satisfaction of any debt contracted prior to the issuing of the patent, Mr. Justice McReynolds said: "*A manifest purpose was to induce settlement upon and cultivation of these lands by those who, five years after proper entry, would become owners in fee through issuance of patents. The great end in view was to convert waste places into permanent homes.*" (Italics supplied.)

public domain was of such importance that congress was [fol. 134] fully justified in withholding from the entryman the equitable title, not merely for the purpose of insuring that such lands would go only to those individuals who demonstrated their good faith and capacity as homemakers, but to leave them free from any burden of taxation until they had become firmly established. Here we have no such important federal function or interest. The sale of a piece of federal property which is no longer of use as a post office or for any other federal function is on the one hand for the mere purpose of salvaging its value and on the other hand for the purpose of returning it to the state tax rolls to bear its just share of the costs of local government. The levying of state taxes upon the equitable title of the petitioner impairs the exercise of no federal function. The implication that the petitioner justifiably paid more for the property than it would have done if it had not relied on tax immunity is unsound, and this is likewise true of the contention that to deny tax immunity to a vendee under an executory contract will prevent the federal government from realizing all that it is entitled to upon sale. Only a property interest or value is subject to sale, and whatever more is paid in excess of such value by reason of an alleged tax immunity is for a privilege that cannot constitutionally be sold or transferred. The individual never enjoys tax immunity as a right but only as an incidental windfall when, and only as long as, the imposition of a state tax in some way impairs, or interferes with, the exercise of a federal function.

4. It is well established by Minnesota decisions that a contract for the sale of land, part of the purchase price being paid, vests in the vendee an equitable title in fee with the bare legal title remaining in the vendor as security, and upon payment the vendor holds it in trust for the vendee. First & American Nat. Bank v. Whiteside, 207 Minn. [fol. 135] 537, 292 N. W. 770; Village of Hibbing v. Commr. of Taxation, 217 Minn. 528, 14 N. W. (2d) 923.[4]

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[4]Chemedlin v. Prince, 15 Minn. 263 (331); Groff v. Ramsey, 19 Minn. 24 (44); Randall v. Constans, 33 Minn. 329, 23 N. W. 530; Shraiberg v. Hanson, 138 Minn. 80, 163 N. W. 1032; Greenfield v. Olson, 143 Minn. 275, 173 N. W. 416;

It is likewise the federal rule that a contract for the sale of land, part of the purchase price being paid, vests in the vendee the equitable title with the bare legal title remaining in the vendor for security. In Lenman v. Jones, 222 U. S. 51, 54, 32 S. Ct. 18, 20, 56 L. ed. 89, 92, involving an appeal from a decree of the court of appeals of the District of Columbia, Mr. Justice Holmes, in referring to the appellee, who was the assignee of the vendee's interest in an executory contract for the purchase of land, said:

> "• • • As she in popular legal language became the equitable owner by her contract, she made the appellee the equitable owner by her contract with him—that is she gave him the right to insist in her place that the legal owner should give up the legal estate upon fulfillment of the conditions agreed."

In Bissell v. Heyward, 96 U. S. 580, 586, 24 L. ed. 678, 679, in speaking of an executory contract for the sale of land, the court said:

> "• • • The execution of the contract (with the partial payment thereon) was a transfer in equity of the title of the land to Bissell; leaving in the representatives of William C. Heyward simply a naked title as trustee for Bissell, to be conveyed upon performance on his part."

It is recognized that this is the general rule (First State Bank v. United States [9 Cir.] 92 F. [2d] 132, 134; First Nat. Bank v. Glens Falls Ins. Co. [4 Cir.] 27 F. [2d] 64, 67), and that it has existed from time immemorial. National Bank of Kentucky v. Louisville Trust Co. (6 Cir.) 67 F. (2d) 97, 100. See C. L. Gransden & Co. v. Commr. [fol. 136] of Int. Rev. (6 Cir.) 117 F. (2d) 80; Lewis v. Hawkins, 23 Wall. 119, 23 L. ed. 113; Laughlin v. North Wisconsin Lbr. Co. 176 F. 772; In re Estate of Reid, 26 Cal. App. (2d) 362, 79 P. (2d) 451; Calvin v. Custer County, 111 Mont. 162, 107 P. (2d) 134.

Benjamin v. Savage, 154 Minn. 159, 191 N. W. 408, 35 A. L. R. 97; Mark v. Liverpool & L. & G. Ins. Co. 159 Minn. 315, 198 N. W. 1003, 38 A. L. R. 310; Minnesota B. & L. Assn. v. Closs, 182 Minn. 452, 234 N. W. 872; S. R. A. Inc. v. State, 213 Minn. 487, 7 N. W. (2d) 484.

The same court which originated the piecemeal doctrine of equitable conversion in Ken Realty Co. Inc. v. Johnson (5 Cir.) 138 F. (2d) 809, held in Burger-Phillips Co. v. Commr. of Int. Rev. (5 Cir.) 126 F. (2d) 934, that a vendee under an executory contract for the purchase from the United States of the old post-office building in Birmingham, Alabama, with part of the purchase price paid and part unpaid, had an interest in land and that the United States as trustee for the vendee held the legal title, which it was bound to convey upon receiving full payment.

No basis exists for making an exception to the general rule where the government is the vendor. We respectfully submit that there is no federal authority holding that the equitable title fails to vest immediately in the vendee under an executory contract for sale of land, part of the purchase price being paid, merely because the sovereign is the vendor, except those decisions of the lower federal courts erroneously based on the land-grant doctrine and of which United States v. Milwaukee (C. C.) 100 F. 828, is typical. Although the government is the vendor, the general rule must control. In the absence of pertinent federal decisions or statutory provisions to the contrary, contracts between the United States and a citizen or private corporation are controlled by the same legal principles that govern contracts between private individuals. "The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf. All obligations which would be implied against citizens under the same circumstances will be implied against them." [fol. 137] United States v. Bostwick, 94 U. S. 53, 66, 24 L. ed. 65, 66; Cory Bros. & Co. v. United States (2 Cir.) 51 F. (2d) 1010, 1012. See, United States v. Guaranty Trust Co. 293 U. S. 340, 55 S. Ct. 221, 79 L. ed. 415; and Mason v. United States, 260 U. S. 545, 67 L. ed. 396.

5. In the former S. R. A. opinion, 213 Minn. 487, 7 N. W. (2d) 484, it was clearly pointed out that the equitable title of the vendee is subject to taxation although the sovereign as vendor stood immune from any tax levy. What would be the result in a case where the vendee is immune from taxation but the vendor is not? Reversing the situation in the instant case, does the equitable title of the vendee become immune from taxation under an executory contract in passing from a vendor who enjoys no tax immunity to a

vendee who does enjoy such immunity? Since the former S. R. A. case, this court has answered this question in the affirmative in Village of Hibbing v. Commr. of Taxation, 217 Minn. 528, 14 N. W. (2d) 923. In this latter case the Oliver Iron Mining Company as the vendor was subject to tax liability, but the vendee, the Benedictine Sisters Benevolent Association, if found to be the owner of the property, was exempt from taxation under Minn. Const. art. 9, § 1, in that it had acquired the property for use as a nonprofit public hospital. It became necessary to determine, among other things, whether at the time of the tax levy on May 1, 1941 (when the association still held merely as a vendee under an executory contract), the association was the owner of the hospital property within the meaning of the tax-exemption provisions of the constitution. The court in holding that it was such owner said (217 Minn. 533, 14 N. W. [2d] 926):

> "3. Although the legal title was in Oliver on May 1, 1941, the association was the *owner* of the property within the meaning of the tax exemption provisions of the constitution and the statute. While an executory contract for a sale or conveyance of land conveys in law no legal title, * * * in equity the purchaser is regarded, for purposes of taxation as well as for others, as the owner, subject to liability for the unpaid price, and the vendor as holding the legal title in trust for him."

[fol. 138] Another significant decision, in reverse of the instant case, and with the United States as the vendee, illustrating that the equitable title passes under an executory contract even though the sovereign is a party, and further illustrating that the tax status of the vendor, as to liability or nonliability for taxes, does not pass to the vendee with the passage of the equitable title, is the case of Calvin v. Custer County, 111 Mont 162, 107 P. (2d) 134. On April 28, 1938, Calvin gave the United States a written option to purchase certain lands, and on June 17, 1938, the latter accepted the option, subject to the obligation of Calvin to give good title, and took possession. The deed of conveyance was executed and delivered on November 15, 1939. By Montana statutes, taxes were then levied in March of each year. Defendants contended that the United States was

not the owner of the property until the deed was delivered, and that therefore the property was subject to the taxes levied in March 1939. Although the final conveyance to the United States pursuant to executory contract of purchase would not have been made if the title had not been made good by Calvin, the court found that the equitable title was in the United States (as soon as the option was accepted) on the day the 1939 taxes were levied and therefore exempt from taxation. The court said (111 Mont. 167, 168, 107 P. [2d] 136):

> "In the case of Town of Cascade v. County of Cascade, 75 Mont. 304, 243 Pac. 806, 808, it was said: 'It is the situation or character of the beneficial owner, the holder of the equitable title or estate, and not that of the holder of the legal title, * * * determines the question of exemption from taxation under our constitutional provisions and those of like import.'
>
> * * * * * * *
>
> "* * * We think that in determining in whom the equitable interest vested we must treat the United States as if it were a private person or corporation, amenable to suit."

6. Summarizing to this point, we hold that the doctrine of [fol. 139] the land-grant cases, a statutory creation designed to meet a special need, has no application to the vendor-vendee relationship under an executory contract for the sale of land by the sovereign. The general rule that a contract for the sale of land, part of the purchase price being paid, vests in the vendee the equitable title with the bare legal title remaining in the vendor as security for payment of the purchase price, applies to contracts where the vendor is the federal government as well as to contracts between citizens. Neither the vendor's liability for nor immunity from taxation passes with the equitable title to the vendee. The character or status of the owner of the equitable title and not that of the holder of the legal title determines whether the equitable estate is subject to taxation. A tax levy upon the vendee's equitable interest is not, directly or indirectly, a tax upon the vendor's legal estate.

7. Although we here find that no state tax has been imposed on any federal property, and that no immunity from taxation possessed by the vendor passed to the vendee as an incident to its acquirement of the equitable title, does the levy of a tax on the vendee's equitable title, by indirection or otherwise, interfere with the exercise of a governmental function? We think not. We have already pointed out that the sale of an old post-office property which is no longer of use is merely for the dual purpose of salvaging its investment value and for returning it to the state tax rolls. The exercise of the state's taxing power in a uniform and nondiscriminatory manner so as to impose no greater burden upon the buyers of government property than upon other buyers is not in violation of the implied tax-immunity doctrine. All that is required is that the sovereign, state or federal, be assured a fair and nondiscriminatory sale market in competing with other vendors. We shall, how- [fol. 140] ever, assume that property may bring a higher price if it were known in advance that the purchaser's equity would not be subject to taxation. The United States Supreme Court, in Group No. 1 Oil Corp v. Bass, 283 U. S. 279, 282, 51 S. Ct. 432-433, 75 L. ed. 1032, 1036-1037, with respect to taxation of the purchaser's interest, established the following rule:

> "But the remote and indirect effects upon the one government of such a non-discriminatory tax by the other have never been considered adequate grounds for thus aiding the one at the expense of the taxing power of the other. See Willcuts v. Bunn, 282 U. S. 216, 231; Educational Films Corp. v. Ward, 282 U. S. 379; Metcalf & Eddy v. Mitchell, 269 U. S. 514, 523-524. This Court has consistently held that where property *or any interest in it* has completely passed from the government to the purchaser, he can claim no immunity from taxation with respect to it, merely because it was once government-owned, or because the sale of it effected some government purpose. New Brunswick v. United States, *supra;* [and other cases cited].
>
> "Property which has thus passed from either the national or a state government to private ownership becomes a part of the common mass of property and

subject to its common burdens. Denial to either government of the power to tax it, or income derived from it, in order to insure some remote and indirect antecedent benefit to the other, would be an encroachment on the sovereign power to tax, not justified by the implied constitutional restriction." (Italics supplied.)

Mr. Justice Stone, who wrote the opinion in the foregoing case, later in Helvering v. Gerhardt (1938), 304 U. S. 405, 58 S. Ct. 969, 82 L. ed. 1427, put "the problem of implied immunities in terms of a balancing of the protection to one government against the diminution of the taxing power of the other." 26 Minn. L. Rev. 408, 409. The trend of recent decisions is to limit the scope of implied immunities "to prevent the immunity doctrine from unduly restricting the tax sources of the federal and state governments." Rottschaefer, American Constitutional Law (1939) § 82, p. 110. During the present period of constant expansion of federal government property holdings and activities, to be reasonably followed after the war by a sale of much property no longer needed for military purposes, it becomes imperative to protect the state taxing power from diminution through the indirect sale of tax immunity to the many pur- [fol. 141] chasers of federal property. In the instant case, the federal government has parted with its entire equitable estate to S. R. A., Inc., and therefore the latter can claim no immunity.

8. Does the taxation of S. R. A.'s equitable interest impair the security value of the federal government's legal title? Clearly not. Petitioner's contention that the state cannot hold a tax sale of vendee's equitable interest without having such sale confer a title paramount to all others so as to destroy the lien of the United States is without foundation, as pointed out in our former S. R. A. opinion, 213 Minn. 487, 496, 7 N. W. (2d) 484, 489.

Mr. Justice Holmes in Baltimore Shipbuilding & Dry Dock Co. v. Baltimore, 195 U. S. 375, 25 S. Ct. 50, 49 L. ed. 242, *in modifying or limiting* the application of N. P. R. Co. v. Traill County, 115 U. S. 600, 6 S. Ct. 201, 29 L. ed. 477, pointed out that a state may levy a tax on a limited interest or estate in the property and, upon default, sell such limited interest or estate, subject to, and without disturb-

ing or impairing, an outstanding superior lien or other estate.[5]

[fol. 142] In New Brunswick v. United States, 276 U. S. 547, 48 S. Ct. 371, 72 L. ed. 693, we have another case in point. The United States Housing Corporation, a federal agency, had built in New Jersey residences to house war-workers of World War I. After the war, having no further use for the buildings, the houses were sold to purchasers upon a ten-percent down payment with a mortgage back

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[5] In Baltimore Shipbuilding & Dry Dock Co. v. Baltimore, 195 U. S. 381-382, 25 S. Ct. 51, 49 L. ed. 244, Mr. Justice Holmes said:

"* * * It is true that commonly taxes on land create a lien paramount to all interests, and that a tax sale often has been said to extinguish all titles and to start a new one. Hefner v. Northwestern Life Ins. Co., 123 U. S. 747, 751; Textor v. Shipley, 86 Maryland, 424, 438; Emery v. Boston Terminal Co., 178 Massachusetts, 172, 184. Perhaps it was assumed that this always was the effect of tax sales in Northern Pacific Railroad v. Traill Co., 115 U. S. 600. But it needs no argument to show that a State may do less. It may tax a life estate to one and a remainder to another, and sell only the interest of the party making default. With regard to what the State of Maryland has done and what are the purport and attempted effect of the tax in this case, we follow the Court of Appeals. That court treated the tax and the lien as going only to the Dock Company's interest in the land, * * *.

"In the next place, as to the interest of the United States in the land. This is a mere condition subsequent. There is no easement or present right *in rem*. The obligation to keep up the dock and to allow the United States to use it carries active duties and is purely personal. The property is subject to forfeiture, it is true, if the obligation is not fulfilled. But it is only by forfeiture that the rights of the United States can be enforced against the *res*. It would be a very harsh doctrine that would deny the right of the States to tax lands because of a mere possibility that they might lapse to the United States. The contrary is the law. The condition cannot be extinguished by the State, but the fee is in the Dock Company, and that can be taxed, and, if necessary, sold, subject to the condition."

for the balance. Many purchasers, pursuant to sales contracts, had made the ten-percent down payment and were in possession but had neither received a deed of conveyance nor executed and delivered a mortgage for the balance when the city of New Brunswick assessed upon the full value of the property certain taxes for the year 1921. No deeds having been delivered at the time of the tax levy, the legal title was still in the federal agency. The housing corporation, with the United States joining by intervention, brought suit to enjoin any tax sales for the collection of the taxes. The court held that in equity the purchasers were the equitable owners and entitled to a conveyance of the title upon executing a mortgage as stipulated, and that they should be treated for the purposes of taxation as if they already held the legal title with a first lien in the United States to secure the balance of the purchase price. In pointing out how the paramount security right of the United States may be protected, the court in significant language said (276 U. S. 556, 48 S. Ct. 373, 72 L. ed. 698):

> "* * * although the City should not be enjoined from collecting the taxes assessed to the purchasers by sales of their interests in the lots, as equitable owners, it should be enjoined from selling the lots for the collection of such taxes unless all rights, liens and interests in the lots, retained and held by the Corporation as security for the unpaid purchase moneys, are expressly excluded from such sales, and they are made, by express terms, subject to all such prior rights, liens and interests. This, we think, will * * * fully protect the paramount right of the United States."

The New Brunswick and the Baltimore Shipbuilding Co. [fol. 142] cases, as well as that of United States v. Canyon County (Idaho) (D. C.) 232 F. 985 (the principle of this latter case allowing state taxation subject to a security lien in favor of the United States was approved in Irwin v. Wright, 258 U. S. 219, 42 S. Ct. 293, 66 L. ed. 573, *supra*), establish clearly how the state may protect the federal government's paramount lien right and how in turn the federal government may protect itself.

9. Any difference between a security right obtained under a mortgage and that provided for by the retention of the legal title under an executory sales contract is a matter of

form only, and not of substance. See, former S. R. A. opinion, 213 Minn. 487, 495-496, 7 N. W. (2d) 484, 488-489; First & Am. Nat. Bank v. Whiteside, 207 Minn. 537, 543, 292 N. W. 770, 774; McCreary v. McGregor, 183 Iowa 732, 167 N. W. 633; and Hatch v. Commerce Ins. Co., 216 Iowa 860, 249 N. W. 164.

All other issues raised by this appeal are fully determined by our prior S. R. A. opinion in 213 Minn. 487, 7 N. W. (2d) 484, and we find nothing in the authorities submitted by petitioner to justify its contention that such former decision is no longer the law of the case on this appeal.

The judgment appealed from is affirmed.

Leroy E. Matson.

[fol. 144] In Supreme Court of Minnesota

In the Matter of the Petition of S. R. A., Incorporated, a corporation, to have determined its claim that the property herein described is exempt from taxation and that the same was partially, unfairly and unequally assessed at a value greater than its actual value for the year 1940.

33952

S. R. A., Inc., Appellant,

vs.

State of Minnesota, Respondent

Judgment

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Ramsey be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondent herein, do have and recover of appellant herein the sum and amount of Forty-One and 50/100 Dollars, ($41.50) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed April 24, 1945.

By the Court.

Attest:

Grace Kaercher Davis, Clerk.

[fol. 145] IN SUPREME COURT OF MINNESOTA

No. 33952

(Title Omitted)

STIPULATION AS TO RECORD—Filed June 18, 1945

Upon the proposed petition of the appellant to the Supreme Court of the United States for writ of certiorari to the Supreme Court of Minnesota, it is stipulated that the record to be certified to the Supreme Court of the United States by the Clerk of the Supreme Court of Minnesota, shall consist of:

1. The record filed by respondent (appellant then) of the proceedings in the District Court of Ramsey County, Minnesota in cause No. 33270 before the Supreme Court of the State of Minnesota.

2. The opinion of the Supreme Court of the State of Minnesota in said cause No. 33270 dated December 24, 1942.

3. The record filed by appellant of the proceedings in the District Court of Ramsey County, Minnesota in this cause before the Supreme Court of the State of Minnesota.

[fol. 146] 4. The opinion of the Supreme Court of Minnesota in this cause rendered on April 13, 1945.

5. The judgment of the Supreme Court of Minnesota in this cause.

6. This stipulation.

Otis Farley & Burger, Attorneys for Appellant. J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Deputy Atty. General; James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 147] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1] IN DISTRICT COURT OF RAMSEY COUNTY, SECOND JUDICIAL DISTRICT, STATE OF MINNESOTA

In the Matter of the Petition of S. R. A. INCORPORATED, a corporation, to have determined its claim that the property herein described is exempt from taxation and that the same was partially, unfairly, and unequally assessed, and assessed at a value greater than its actual value for the year 1941.

PETITION

Now comes petitioner and respectfully alleges and shows:

I

That petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota.

II

That the United States of America was, on the 1st day of [fol. 2] May, 1941, and for many years prior thereto, and now is, the owner of a certain tract or parcel of land situate, lying, and being in the City of Saint Paul, County of Ramsey, and State of Minnesota, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabashaw streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabashaw street and one hundred and sixty (160) feet on Fifth Street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

that said real estate is described on the Tax Rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South

one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, and is assessed to S. R. A. Incorporated subject to fee title re-
[fol. 3] maining in the United States of America.

III

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A", and made a part hereof by reference.

IV

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B", and made a part hereof by reference.

V

That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by tele-
[fol. 4] gram dated April 21, 1939, true and correct copy of said acceptance being attached hereto, marked Exhibit "C", and made a part hereof by reference.

VI

That petitioner has paid only the sums required to be paid to the Treasurer of the United States under the terms of said contract of purchase and sale, and that petitioner is not now and was not on May 1, 1941, entitled to receive from the United States of America, through the Director of Procurement, a quit claim deed conveying title to the property above described.

VII

That the title to all of the premises above described was at all times herein mentioned and now is in the United States

of America, and that the same premises are exempt from taxation by the State of Minnesota or by the County of Ramsey.

VIII

That said real estate so hereinbefore described was valued by the assessing officers of Ramsey County as of May 1, 1941, in the sum of Two Hundred Seventy-seven Thousand [fol. 5] Six Hundred Dollars ($277,600.00), its classified value being put upon the assessment lists at One Hundred Eleven Thousand and Forty Dollars ($111,040.00), to which was applied the tax rate of one hundred two and seven tenths (102.7) mills, resulting in the tax in the sum of Eleven Thousand Four Hundred Thirty-one and 78/100 Dollars ($11,431.78).

IX

That said real estate has been partially, unfairly, and unequally assessed, and has been assessed at a value greater than its real or actual value.

Wherefore, Petitioner prays for an order of the within Court:

1. Determining that the title to the premises herein described is in the United States of America, and that the same are exempt from taxation by the State of Minnesota or the County of Ramsey;

2. Reducing the full and true value of said premises to the actual value thereof;

3. For such other and further relief as may to the Court seem just and proper; and

4. For its costs and disbursements herein.

Dated: This 7th day of May, 1942.

S. R. A. Incorporated, by R. E. Albrecht, President, Petitioner.

[fol. 6] *Duly sworn to by R. E. Albrecht. Jurat omitted in printing.*

[fols. 7-16] Exhibit "A" omitted. Printed side page. 8 ante.

[fols. 17-18] Exhibit "B" omitted. Printed side page. 19 ante.

[fol. 19] Exhibit "C" omitted. Printed side page. 21 ante.

[fol. 20] In District Court of Ramsey County

Amended Petition

Now comes petitioner and respectfully alleges and shows:

I

That petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota.

[fol. 21] II

That the United States of America was, on the 1st day of May, 1941, and for many years prior thereto, and now is, the owner of a certain tract or parcel of land situate, lying and being in the City of Saint Paul, County of Ramsey, and State of Minnesota, to-wit:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabashaw Streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabashaw street and one hundred and sixty (160) feet on Fifth Street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867, in Book P. P. of Deeds, page 65, 66, 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

that said real estate is described on the Tax Rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South [fol. 22] one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, and is assessed to S. R. A. Incorporated subject to fee title remaining in the United States of America.

III

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A", and make a part hereof by reference.

IV

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement Department, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B" and made a part hereof by reference.

V

[fol. 23] That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C" and made a part hereof by reference.

VI

That petitioner has paid to the Treasurer of the United States under the terms of the said contract of purchase the sum of Six Thousand Fifty-five and 05/100 Dollars ($6,055.05) as of May 26, 1939, the further sum of six Thousand Fifty-five and 05/100 Dollars ($6,055.05) with interest thereon at the rate of four percent (4%) per annum as of the 26th day of February, 1940, and the further sum of Nine Thousand Five Hundred Dollars ($9,500.00) as of the 26th day of May, 1940, which said last payment included

interest on the unpaid balance of the purchase price at the rate of four percent (4%) per annum from the 26th day of May, 1939 which interest amounted to Four Thousand Three Hundred Fifty Nine and 64/100 Dollars ($4,359.64) leaving a balance of Five Thousand One Hundred Forty and 36/100 Dollars ($5,140.36) which was applied on the unpaid balance of the purchase price; that there was due and owing to the United States of America on the 1st day of May, 1941 the sum of One Hundred Three Thousand [fol. 24] Eight Hundred Fifty and 54/100 Dollars ($103,850.54).

VII

That the title to all of the premises above described was at all times herein mentioned and now is the United States of America, and that the said premises are immune and exempt from taxation by the State of Minnesota or by the County of Ramsey under and by virtue of Article 4, Section 3 of the Constitution of the United States and by virtue of the Organic Act of the State of Minnesota adopted by the Congress of the United States on the 3rd day of March, 1849 and by virtue of the Act of Congress authorizing a state government for the territory of Minnesota, adopted by the Congress of the United States on the 26th day of February, 1857, and by virtue of Article 2, Section 3 of the Constitution of the State of Minnesota and by virtue of Sections 1977 and 1979 Mason's Minnesota Statutes (Minnesota Statutes 1941, Section 272.03).

VIII

Notwithstanding that said property is exempt and immune from taxation by the State of Minnesota or the County of Ramsey the said real estate so hereinbefore described was valued by the assessing officers of Ramsey County as of [fol. 25] May 1, 1941 in the sum of Two Hundred Seventy Seven Thousand Six Hundred Dollars ($277,600.00), its classified value being put upon the assessment lists at One Hundred Eleven Thousand Forty Dollars ($111,040.00), to which was applied the tax rate of one hundred two and seven tenths (102.7) mills, resulting in a tax in the sum of Eleven Thousand Four Hundred Thirty One and 78/100 Dollars ($11,431.78).

IX

That the property above described was assessed and taxed on the records of Ramsey County, Minnesota "subject to fee title remaining in the United States of America"; that no authority exists by statute or otherwise to levy and assess a tax upon an interest in real estate in the State of Minnesota other than the whole interest therein.

X

That the action of the County of Ramsey and State of Minnesota in levying a tax upon said premises deprives this petitioner of a privilege and immunity secured to it under the Constitution of the United States; deprives it of property without due process of law and denies to it the equal [fol. 26] protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

XI

That said real estate has been partially, unfairly, and unequally assessed, and has been assessed at a value greater than its real or actual value.

Wherefore, Petitioner prays for an order of the within Court:

1. Determining that the title to the premises herein described is in the United States of America, and that the same are immune and exempt from taxation by the State of Minnesota or the County of Ramsey until the purchase price therefor is paid in full to the United States and the petitioner is entitled to a conveyance from the United States.

2. Reducing the full and true value of said premises to the actual value thereof;

3. For such other and further relief as may to the Court seem just and proper; and

4. For its costs and disbursements herein.

Dated: This 7 day of May, 1944.

S. R. A. Incorporated, by R. E. Albrecht, President, Petitioner.

[fol. 27] *Duly sworn to by Robert E. Albrecht. Jurat omitted in printing.*

(Exhibits A, B and C attached to this amended petition are identical with Exhibits A, B and C attached to original petition at folios 8 to 21 of this record.)

[fol. 28] In District Court of Ramsey County

Stipulation of Facts

It Is Stipulated by and between the undersigned, the attorneys for the respective parties hereto:

I

That S. R. A. Incorporated is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and is the petitioner in the above entitled cause.

II

That the premises which are subject of the above entitled petition are described as follows:

> The Southerly one hundred and five (105) feet of Lots ten (10), eleven (11), and twelve (12) and of the Easterly ten (10) feet of Lot Nine (9) in Block Eight (8) of the original Town of Saint Paul; comprising together a piece of land situated on the Northwesterly corner of Fifth and Wabasha streets in said City of Saint Paul fronting one hundred and five (105) feet on Wabasha street and one hundred and sixty (160) feet on Fifth street, being the same land conveyed to the United States by William A. Spencer and wife by deed dated April 10, 1867, recorded in the Register's Office of Ramsey County, Minnesota, September 19, 1867 in Book P. [fol. 29] P. of Deeds, page 65, 66 & 67, and by John Randall and wife by deed dated April 10, 1867, recorded, etc., September 19, 1867, Book P. P. of Deeds, page 67 and 68, together with the improvements thereon;

and are situate in the City of Saint Paul, County of Ramsey, and State of Minnesota, at the intersection of Fifth and Wabasha Streets in said City; that the real estate is described on the tax rolls of Ramsey County, Minnesota, as the East ten (10) feet of the South one hundred five (105)

feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota.

III

That for tax purposes the premises so described are assessed upon the records of Ramsey County, Minnesota, to S. R. A. Incorporated "subject to fee title remaining in the *United* States of America."

IV

That the premises above described were acquired by the United States of America by deed from various parties in the year 1867, and that the legal title to the said premises is [fol. 30] now and ever since 1867 has been in the United States of America, save as the same may have been affected by the transactions with S. R. A. Incorporated as hereinafter set forth:

That in or about the year 1870 a building was erected upon the above described premises by the United States of America, and for many years thereafter the premises were occupied by the United States of America as a post office and as an office for various departments of the United States, including the Department of Internal Revenue; that for some years prior to the 1st day of April, 1939, neither the building on the premises nor any portion of the premises had been occupied by the United States of America or by any other person whatsoever.

V

That on or about the 17th day of April, 1939, petitioner submitted to the Director of Procurement, Procurement Division, Treasury Department, Washington, D. C., a proposal to purchase the premises above described, a true and correct copy of such proposal being hereto attached, marked Exhibit "A" and made a part hereof by reference.

[fol. 31]

VI

That on the 21st day of April, 1939, the petitioner supplemented said proposal to purchase by a Western Union Money Order Message forwarded to the Treasurer of the United States in care of the Director of Procurement De-

partment, a true and correct copy of said Money Order Message being attached hereto, marked Exhibit "B" and made a part hereof by reference.

VII

That on the 26th day of May, 1939, the Treasury Department through the Procurement Division thereof in writing accepted the proposal of April 17, 1939, as amended by telegram dated April 21, 1939, a true and correct copy of said acceptance being attached hereto, marked Exhibit "C" and made a part hereof by reference.

VIII

That subsequent to the 26th day of May, 1939, the building which had been erected upon the premises by the United States of America was razed, demolished, and destroyed by S. R. A. Incorporated; that subsequent thereto and prior to the 1st day of May, 1940, a building had been erected upon said premises by S. R. A. Incorporated; that on the 1st day [fol. 32] of May, 1940, stores in said building had been leased by S. R. A. Incorporated to various tenants, and the balance of the premises not covered by the building had been leased for automobile parking purposes, and that all of said premises on May 1, 1940, was used for purposes of a commercial nature, and no part or portion thereof was devoted to the business or activities of the United States of America; that the petitioner collected and retained the rents for its own account.

IX

That S. R. A. Incorporated has paid to the United States of America the payment accompanying the proposal of April 17, 1939, of $5,755.05; the payment accompanying the supplemental proposal of April 21, 1939 of $300.00; the payment due February 26, 1940 of $6,055.05, with interest thereon at 4% per annum; and the further payment of $9,560.00 due May 26, 1940, which said last payment included interest on the unpaid balance of the purchase price at the rate of 4% per annum from the 26th day of May, 1939, which interest amounted to $4,359.64, leaving a balance of $5,140.36 which was applied on the unpaid balance of the purchase price; that on May 1, 1941 no other payments

had been made to the United States of America and there was then due and owing to the United States of America the sum of $103,850.84.

[fol. 33]

X

For the purpose of determining the issue here submitted and without prejudice to any other issue, it is stipulated that the property in question was assessed and taxed as all other real property in the County and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the statutes of the State of Minnesota; that the tax records of said Ramsey County, Minnesota, of taxes levied and assessed for the year 1941 were duly certified on January 6, 1942 by Eugene A. Monick, County Auditor of said Ramsey County, including the property in question, to be a correct list of the taxes levied upon the real property in said County of Ramsey for the year 1941; and that on said last mentioned date Elsa M. Obst duly certified that she received the said tax records from the said County Auditor; and that said tax records contained the following entries pertaining to the assessment of the property in question, to-wit: assessed in the name of "S. R. A. Incorporated (subject to the fee title remaining in the United States of America)"; description of property; the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also the South one hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), Saint Paul, Minnesota; [fol. 34] assessed valuation $111,040; general tax $11,431.78; total general tax $11,431.78; and that said tax records have been in the possession of the said County Treasurer for the collection of said taxes ever since said last mentioned date. That the tax rate applicable to the property in question for the year 1941 was 102.7 mills upon the assessed valuation.

XI

That it is agreed that for the purpose of this litigation the full and true value of the premises described in Paragraph II hereof as of May 1, 1941 was $225,000.00; that such valuation of $225,000.00 is the full and true value without deduction of any amount on account of the balance remaining

due on May 1, 1941 to the United States of America under the contract hereinbefore described.

DATED: This 11th day of April, 1944.

James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney, Attorneys for County of Ramsey and State of Minnesota. Otis, Fariey & Burger, Attorneys for Petitioner.

[fol. 35] (Exhibits A, B, and C attached to this stipulation are identical with Exhibits A, B, and C attached to original petition at folios 8 to 21 of this record.)

In District Court of Ramsey County

Findings of Fact and Conclusions of Law

The above entitled matter came on regularly for trial before the undersigned, one of the Judges of the above named court, on the 12th day of April, 1944, pursuant to a petition to review the taxes for the year 1941 as provided by Minnesota Statutes, 1941, Section 278.01 (Mason's 1940 Supplement, Section 2126-1). The State of Minnesota was represented by James F. Lynch, County Attorney, and Andrew R. Bratter, Assistant County Attorney; the petitioner, S. R. A. Incorporated, was represented by Roland J. Fariey, its attorney.

The parties having stipulated to the facts and the Court having heard counsel and being fully advised in the premises, makes the following:

[fol. 36] Findings of Fact

I

That S. R. A. Incorporated is a corporation duly organized and existing under the laws of the State of Minnesota.

II

That the description of the premises in question is, the East ten (10) feet of the South one hundred five (105) feet of Lot Nine (9), also South one hundred five (105) feet

of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota, also known as Original Town of Saint Paul, which premises are situate in the City of Saint Paul in said County and State on the Northwest corner of 5th and Wabasha Street in said City.

III:

That the legal title to said premises has been in the United States of America since 1867; that since 1879 the said premises have been improved and were occupied by various departments of the government of the United States and particularly by the Department of Internal Revenue; that for some years prior to 1939 the premises were vacated and were not used or required for governmental purposes; and [fol. 37] that pursuant to Act of Congress the said property was declared by the Treasury Department of the United States to be in excess of its needs and was offered for sale.

IV

That on or about the 26th day of May, 1939, a contract for deed was entered into between S. R. A. Incorporated, and the United States of America under the terms of which the petitioner, S. R. A. Incorporated, agreed to pay to the United States of America as the purchase price of said premises, the sum of One Hundred Twenty-one Thousand, One Hundred one-Dollars ($121,101.00) upon terms particularly set forth in the stipulation of the parties hereto, requiring payments in installments for a period of ten years and until May 26, 1949; and the United States of America agreed that when the total purchase price had been paid as provided, and the terms and conditions of the contract for deed had been complied with; to deliver to S. R. A. Incorporated, or its nominee, a quit claim deed to the premises and to deliver to it a marketable title, free of all encumbrances except such as may have accrued against the petitioner's interest in the property subsequent to May 26, 1939; that under the terms of the same contract S. R. A. Incorporated was entitled to take immediate possession of the premises, to sell, [fol. 38] assign or lease any part or all of said premises without the approval of the United States of America, but subordinate to the interests of the United States, to obtain a deed to portions of the premises less than the whole upon advance payment of a portion of the purchase price to be

determined by the United States of America; and that said contract is still in full force and effect.

There remained unpaid under said contract on May 1, 1941 the sum of $103,850.84.

V

That subsequent to the 26th day of May, 1939 and prior to the 1st day of May, 1941 the petitioner, S. R. A. Incorporated, took possession of said property, razed, demolished and destroyed the building and improvements on said premises and erected thereon a new building, consisting of a number of stores, which on the 1st day of May, 1941, were and still are leased by the said petitioner to various tenants; the remainder of the premises, not covered by the building, were and still are leased to another tenant for automobile parking purposes; and that all of said premises on May 1, 1941 were and still are used for the private commercial purposes of S. R. A. Incorporated, and no part thereof was devoted to the business or activities of the United States of America; that the petitioner collected and retained the rents for its own account.

[fol. 39]

VI

The property in question was assessed and taxed as all other real property in the said county and upon the same rates as other like real property; that the assessment of said property was made according to the procedure provided for the assessment of real property by the statutes of the State of Minnesota; and that the tax records of said Ramsey County for the year 1941 contain the following entries pertaining to the assessment of the property in question, to-wit: assessed in the name of S. R. A. Incorporated (but subject to the fee title remaining in the United States of America)" description of property: "the East Ten (10) feet of the South One Hundred five (105) feet of Lot Nine (9) also the South One hundred five (105) feet of Lots Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota; that it was agreed between the parties hereto that the true and full value of said premises on the first day of May, 1941, was the sum of $225,000.00, without deduction of any amount on account of the balance remaining due to the United States of America under the contract hereinbefore described; that the assessed

value of said premises on said last mentioned date was the sum of $90,000.00; and that the tax rate for said year was 102.7 mills, resulting in a tax upon said premises for the [fol. 40] year 1941 in the sum of $9,243.00, in addition to an assessment for street sprinkling in the sum of $27.97, being a total of $9,270.97.

CONCLUSIONS OF LAW

I

That the assessment of the said property was duly made in accordance with the statutes of the State of Minnesota and was assessed and taxed as all other real property in said Ramsey County and upon the same rates as other like property.

II

That the petitioner, S. R. A. Incorporated, has, and on May 1, 1941, had, the equitable title to the said property, and that the United States of America has, and on said last mentioned date, had the legal title thereto in trust for said petitioner as security for payment of the balance of the purchase price.

III

That said premises are not now and on May 1, 1941 were not immune or exempt from taxation by the State of Minnesota.

[fol. 41]

IV

That the State of Minnesota is entitled to judgment against the property described as follows: The East Ten (10) feet of the South One Hundred five (105) feet of Lot Nine (9), also the South One hundred five (105) feet of Lot Ten (10), Eleven (11), and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota, which addition is sometimes referred to as the Original Town of Saint Paul, for taxes for the year 1941 in the sum of $9,270.97, which amount is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim or lien, of whatever nature, in law or equity, of every person, company, or corporation, subject however, to the prior rights, liens and interests of the United States of America; and that unless such amount be paid, the land hereinbefore described

shall be sold, as provided by law, to satisfy the amount to which it is liable, subject however, to the prior rights, liens and interests of the United States of America.

Let Judgment be entered accordingly.

Dated at St. Paul, Minnesota, this 14th day of April, 1944.
J. C. Michael, Judge of District Court.

A stay of 20 days is hereby granted.
Michael, J., Judge of District Court.

[fol. 42] IN DISTRICT COURT OF RAMSEY COUNTY

JUDGMENT—Filed May 8, 1944

The above entitled matter having been heard before the Honorable James C. Michael, one of the Judges of the above named court, on the 12th day of April, 1944 pursuant to a petition filed by S. R. A. Incorporated, a corporation, to review the taxes for the year 1941 as provided by Minnesota Statutes 1941, Section 278.01 (Mason's 1940 Supplement, Sec. 2126-1), resulting in the filing of findings of fact and conclusions of law herein directing the entry of judgment in favor of the State of Minnesota.

NOW THEREFORE,

IT IS HEREBY ADJUDGED, That the parcel of land hereinafter described, is liable for taxes to the amount set opposite the same, as follows:

Description	*Amount*
The East Ten (10) feet of the South One Hundred five (105) feet of Lot Nine (9), also the South One hundred five (105) feet of Lots Ten (10) Eleven (11) and Twelve (12), Block Eight (8), City of Saint Paul, Capital of Minnesota, which addition is sometimes referred to as the Original Town of Saint Paul	$9,270.97

[fol. 43] The amount of taxes to which, as hereinbefore stated such parcel of land is liable, is hereby declared a lien upon such parcel of land as against the estate, right, title, interest, claim, or lien, of whatever nature, in law or

equity, or every person, company, or corporation, subject however to the prior rights, liens and interests of the United States of America; and It Is Adjudged that, unless the amount to which such parcel is liable be paid, such parcel be sold, as provided by law, to satisfy the amount to which it is liable, subject however, to the prior rights, liens, and interests of the United States of America.

Dated this 8th day of May, 1944.

J. J. Fitzgerald, Clerk of the District Court, County of Ramsey. (Seal.)

[File endorsement omitted.]

[fol. 44] In District Court of Ramsey County

Notice of Appeal to Supreme Court of State of Minnesota

To James F. Lynch, County Attorney and Andrew R. Bratter, Assistant County Attorney, attorneys for the County of Ramsey and State of Minnesota, and to J. J. Fitzgerald, Clerk of the aforesaid Court:

Take Notice that the petitioner, S. R. A. Incorporated appeals to the Supreme Court of the State of Minnesota from the judgment and the whole thereof, entered herein on May 8, 1944.

Otis, Farley & Burger, Attorneys for Petitioner, W-1862 First Nat'l. Bank Bldg., St. Paul, Minnesota.

[fols. 45-57] Opinion in Case No. 33270 omitted. Printed side page. 62, ante.

[fols. 58-81] Opinion in Case No. 33952 omitted. Printed side page. 120, ante.

[fol. 82] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

In re Petition of S. R. A., Inc. to have determined its claim that the property herein described is exempt from taxation, etc., for 1941.

33953

OPINION—Filed April 13, 1945

MATSON, *Justice:*

This case, pertaining to the 1941 tax assessment, is a companion to In re Petition of S. R. A., Inc., —— Minn. ——, 18 N. W. (2d) 442, pertaining to the 1940 tax assessment, opinion in which is filed herewith. For the reasons stated in the aforesaid opinion, the decision in In re Petition of S. R. A., Inc., 213 Minn. 487, 7 N. W. (2d) 484, is controlling, and the judgment appealed from is affirmed.

Affirmed.

Leroy E. Matson.

[fol. 83] IN SUPREME COURT OF MINNESOTA

In the Matter of the Petition of S. R. A., Incorporated, a corporation, to have determined its claim that the property herein described is exempt from taxation and that the same was partially, unfairly and unequally assessed, and assessed at a value greater than its actual value for the year 1941

33953

S. R. A., INC., Appellant,

vs.

STATE OF MINNESOTA, Respondent

JUDGMENT

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Ramsey be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondent herein, do have and recover of appellant herein the sum and amount of Twenty-Five and No/100 Dollars ($25.00) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed April 24, 1945:

By the Court.

Attest:

Grace Kaercher Davis, Clerk.

[fol. 83a] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 84] In Supreme Court of Minnesota

No. 33953

[Title omitted]

Stipulation as to Record—Filed June 18, 1945

Upon the proposed petition of the appellant to the Supreme Court of the United States for writ of certiorari to the Supreme Court of Minnesota, it is stipulated that the record to be certified to the Supreme Court of the United States by the Clerk of the Supreme Court of Minnesota, shall consist of:

1. The record filed by appellant of the proceedings in the District Court of Ramsey County, Minnesota in this cause before the Supreme Court of the State of Minnesota.

2. The opinion of the Supreme Court of the State of Minnesota in cause No. 33270 before that Court, dated December 24, 1942.

3. The opinion of the Supreme Court of the State of Minnesota in cause No. 33952 before that Court, dated April 13, 1945.

4. The opinion of the Supreme Court of Minnesota in this cause dated April 13, 1945.

[fol. 85] 5. The judgment of the Supreme Court of Minnesota in this cause.

6. This stipulation.

Otis Faricy & Burger, Attorneys for Appellant; James F. Lynch, County Attorney; Andrew R. Bratter, Assistant County Attorney; J. A. A. Burnquist, Attorney General; Geo. B. Sjoselius, Deputy Attorney General, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 86] Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

Nos. —

In the Matter of the Petition of S. R. A. INCORPORATED, ETC.

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITIONS FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioner,

It Is Ordered that the time for filing petitions for certiorari in the above-entitled causes be, and the same is hereby, extended to and including July 24th, 1945.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 13 day of July, 1945.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 254

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 255

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the Supreme Court of the State of Minnesota is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.